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ARTICLE II: ADMINISTRATION

78-200 Administrative and Decision-Making Bodies

(A) Summary of Chapter Administration and Review Roles

(1) Chapter Administration and Review Bodies

The following entities shall have roles in administering the provisions of this Chapter:

- (a) Town Council;
- (b) Planning Commission;
- (c) Board of Zoning Appeals (BZA);
- (d) Heritage Preservation Review Board (HPRB);
- (e) Architectural Review Board (ARB); and
- (f) Town Staff, including the Zoning Administrator.

Information regarding membership and operating procedures for the Board of Zoning Appeals (BZA), Heritage Preservation Review Board (HPRB), and the Town staff are included within this Chapter. Membership and operating procedures for the Town Council, Planning Commission, and Architectural Review Board (ARB) are located elsewhere within the Town's Code of Ordinances.

(2) Summary Table of Administration and Review Roles

Table 78-200.A, *Development Permit Review Procedures* summarizes the review and decision-making responsibilities of the entities that have specific roles in the administration of the procedures set forth in this Article.

TABLE 78-200.A: DEVELOPMENT PERMIT REVIEW PROCEDURES

S = STAFF REVIEW R = REVIEW AND ADVISE D = FINAL DECISION A = APPEAL

| PROCESS | ZONING ADMINISTRATOR | ARCHITECTURAL REVIEW BOARD (ARB) | HERITAGE PRESERVATION REVIEW BOARD (HPRB) | PLANNING COMMISSION | TOWN COUNCIL | BOARD OF ZONING APPEALS (BZA) |
|--|----------------------|----------------------------------|---|---------------------|--------------|-------------------------------|
| TOWNWIDE: | | | | | | |
| Official Zoning Map Amendments (Section 78-202(A)) | S | | | R | D | |
| Zoning Ordinance Text Amendment (Section 78-202(B)) | S | | | R | D | |
| Special Exception (Section 78-202(C)) | S | | | R | D | |
| Variance (Section 78-202(D)) | S | | | | | D |
| Administrative Adjustments (Section 78-202(E)) | D | | | | | A |
| Plans that May be Approved Administratively (Section 78-202(F)(3)) | D | | | | A | |
| Site Plans that Requires a Public Hearing (Section 78-202(F)(4)) | S | | | R | D | |
| Site Plan that May be Approved Administratively (Section 78-202(F)(3)) | D | | | | A | |

TABLE 78-200.A: DEVELOPMENT PERMIT REVIEW PROCEDURES**S = STAFF REVIEW R = REVIEW AND ADVISE D = FINAL DECISION A = APPEAL**

| PROCESS | ZONING ADMINISTRATOR | ARCHITECTURAL REVIEW BOARD (ARB) | HERITAGE PRESERVATION REVIEW BOARD (HPRB) | PLANNING COMMISSION | TOWN COUNCIL | BOARD OF ZONING APPEALS (BZA) |
|--|----------------------|----------------------------------|---|---------------------|--------------|-------------------------------|
| Single Lot Development Plan (Section 78-202(F)(3)(c)) | D | | | | A | |
| Temporary Use Site Plans (Section 78-202(F)(3)(f)) | D | | | | | A |
| Administrative Sign Approval (Section 78-202(G)(7)) | <u>D</u> | | | | | <u>A</u> |
| Zoning Inspection Permit (Section 78-202(I)) | D | | | | | A |
| Zoning Appropriateness Permit (Section 78-202(J)) | D | | | | | A |
| Determinations (Section 78-202(K)) | <u>D</u> | | | | | <u>A</u> |
| Appeals from Decisions and Determinations by the of Zoning Administrator (Section 78-202(L)) | | | | | | A |
| Determinations (Section 78-202(K)) | D | | | | | A |
| Appeals Related to Proffer Interpretation (Section 78-202(M)) | | | | | A | |
| Administrative Sign Approval (Section 78-202(G)(7)) | D | | | | | A |
| OUTSIDE THE HERITAGE PRESERVATION OVERLAY DISTRICT : | | | | | | |
| Sign Permit (Section 78-202(G)(4)) | S | D | | | A | |
| Master Sign Plan (Section 78-202(G)(4)) | S | D | | | A | |
| Master Sign Plan Conformance Permit (Section 78-202(G)(5)) | D | A | | | A | |
| Modification from Master Sign Plan for Individual Establishment (Section 78-202(G)(6)(b)) | S | D | | | A | |
| INSIDE THE HERITAGE PRESERVATION OVERLAY DISTRICT : | | | | | | |
| Designation of any Site, Building or Structure as an Historic Landmark or an Area as a Heritage Preservation Overlay District (Section 78-304(C)(5)) | S | | R | R | D | |
| Sign Permit (Section 78-202(G)(4)) | S | | D | | A | |
| Master Sign Plan (Section 78-202(G)(4)) | S | | D | | A | |
| Master Sign Plan Conformance Permit (Section 78-202(G)(5))8-202(H)(5)) | D | | A | | A | |
| Modification from Master Sign Plan for Individual Establishment (Section 78-202(G)(6)(b)) | S | | D | | A | |

TABLE 78-200.A: DEVELOPMENT PERMIT REVIEW PROCEDURES

S = STAFF REVIEW R = REVIEW AND ADVISE D = FINAL DECISION A = APPEAL

| PROCESS | ZONING ADMINISTRATOR | ARCHITECTURAL REVIEW BOARD (ARB) | HERITAGE PRESERVATION REVIEW BOARD (HPRB) | PLANNING COMMISSION | TOWN COUNCIL | BOARD OF ZONING APPEALS (BZA) |
|--|----------------------|----------------------------------|---|---------------------|--------------|-------------------------------|
| Certificate of Appropriateness (Section 78-202(H)) | S | | D | | A | |

(B) Town Council

The Town Council shall have the powers and duties specified in Title 15.2, Chapter 22 of the Code of Virginia and the Town Charter, as well as the following powers and duties under this Chapter:

- (1) To review and decide applications for:
 - (a) Amendments to the Official Zoning Map
 - (b) Amendments to the Zoning Text
 - (c) Special Exceptions
 - (d) Site Plans that require a public hearing.
- (2) To review and decide appeals from:
 - (a) Final decisions of the Zoning Administrator on Site Plans that May be Approved Administratively (Section 78-202(F)(3)) and on Single Lot Development Plans (Section 78-202(F)(3)(b));
 - (b) Determinations of the Zoning Administrator on interpreting proffers (Section 78-202(M)78-202(L));
 - (c) Final decisions of the HPRB on Certificates of Appropriateness (Section 78-202(H)78-202(H)).
 - (d) Final Decisions of the Architectural Review Board (Section 58-7978-59.)
- (3) To review and decide whether or not to designate any Site, Building or Structure as an Historic Landmark or an Area as a Heritage Preservation Overlay District
- (4) To take any other action not delegated to the Planning Commission, Board of Zoning Appeals, Architectural Review Board, Heritage Preservation Review Board, Town Manager, Town Attorney, Zoning Administrator, or heads of Town departments, as the Town Council may deem desirable and necessary to implement the provisions of this Chapter.
- (5) To obtain, for newly elected members, training and certification by the Citizens Planning Education Association of Virginia or similar certification to be completed within two years of election.

(C) Planning Commission

(1) Powers and Duties

The Planning Commission shall have the powers and duties specified in Title 15.2, Chapter 22 of the Code of Virginia, as well as the following powers and duties under this Chapter:

- (a) To review and make recommendations to the Town Council to approve or disapprove applications for:
 1. Amendments to the Official Zoning Map
 2. Amendments to the Zoning Text
 3. Special Exception
 4. Site plans that require a public hearing.
 5. Designation of any Site, Building or Structure as an Historic Landmark or an Area as a Heritage Preservation Overlay District.

- (b) To make its special knowledge and expertise available upon written request and authorization of the Town Council to any official, department, board, commission, or agency of the Town. Newly appointed members shall be offered training and certification by the Citizens Planning Education Association of Virginia or similar certification to be completed within two years of appointment.

(2) **Membership and Procedures**

The membership and procedures for the Planning Commission are established in Sections 2-36 through 2-44 of the Herndon Town Code. The Planning Commission may establish bylaws and other standards to carry out its duties.

(D) **Board of Zoning Appeals**

(1) **Powers and Duties**

The Board of Zoning Appeals shall have the following powers and duties under this Chapter:

- (a) To review and decide applications for Variances (Section 78-202(D)).
- (b) To review and decide appeals taken from any final decision of the Zoning Administrator or other administrative officer on:
1. Applications for:
 - a. Administrative Adjustments (Section 78-202(E));
 - b. Temporary Use Site Plans ~~Permits~~ (Section ~~78-202(G)~~ 78-202(F)(3)(f));
 - c. Zoning Inspection Permits (Section 78-202(J));
 - d. Zoning Appropriateness Permits (Section 78-202(K));
 2. Other Determinations and Decisions of the Zoning Administrator (Section 78-202(L)).
- (c) To make its special knowledge and expertise available upon written request and authorization of the Town Council to any official, department, board, commission or agency of the Town.

(2) **Membership**

- (a) The Board of Zoning Appeals shall consist of 5 members.
- (b) Each member shall be a qualified voter of the Town. No member of the Board shall hold any other position, whether elected, appointed or employed, with the Town.
- (c) Each member shall be appointed by the Town Council by majority vote of those present and voting. Newly appointed members shall be offered training and certification by the Citizens Planning Education Association of Virginia or similar certification to be completed within two years of appointment.
- (d) **Term**
1. The term of office of members of the Board of Zoning Appeals shall be 5 years, staggered so that 1 term begins each year.
 2. A member shall continue to serve until reappointed or replaced.
- (e) Any member who resigns from the Board of Zoning Appeals prior to the end of the member's term shall do so in writing to the Chair.
- (f) Any member of the Board of Zoning Appeals may be removed by the Town Council from office for malfeasance, misfeasance or nonfeasance in office.
- (g) Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term in the same manner as the original appointment.

- (h) Members' compensation, if any, shall be fixed by resolution of the Town Council.

(3) Chair and Vice-Chair

- (a)** The Board of Zoning Appeals shall choose annually a Chair and a Vice-Chair.

- (b)** The term of office of the Chair and the Vice-Chair shall be 1 year.

(c) General Duties of Officers

1. The Chair shall preside at meetings of the Board of Zoning Appeals, decide points of order on procedure, and take such action as shall be necessary to preserve the order and integrity of proceedings before the Board.

2. In the absence of the Chair, the Vice-Chair shall act as Chair and shall have powers of the Chair.

3. In the absence of the Chair and Vice-Chair, the most senior Board member shall act as Chair and shall have powers of the Chair.

(4) Staff

The Zoning Administrator or designee shall serve as the professional staff to the Board of Zoning Appeals and provide it with administrative support.

(5) Meetings, Hearings and Procedures

Meetings of the Board of Zoning Appeals ordinarily shall be held monthly and at such other times as a quorum of the Board may determine. The Chair may administer oaths and compel the attendance of witnesses.

(6) Quorum and Necessary Vote

Three (3) members of the Board of Zoning Appeals shall constitute a quorum. No official business of the Board shall be conducted without a quorum present. A favorable vote of 3 members of the Board shall be necessary to reverse any determination of the Zoning Administrator on appeal, or to approve a Variance.

(7) Rules

- (a) The Board of Zoning Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or abstaining from a vote, indicating such fact.

- (b)** The Board of Zoning Appeals shall keep records of its official actions, which shall be immediately filed in the office of the Zoning Administrator and shall be a public record.

- (c) The Board of Zoning Appeals may, by a majority vote of the entire membership, draft and approve such additional bylaws governing its procedure as it may deem necessary or advisable.

(E) Heritage Preservation Review Board

(1) Establishment

There hereby is established a Heritage Preservation Review Board (HPRB).

(2) Powers and Duties

The HPRB shall have the following powers and duties under this Chapter:

- (a) To recommend to the Planning Commission and the Town Council the establishment, expansion, reduction, or elimination of Heritage Preservation Overlay Districts.

- (b)** To review and decide applications for properties within the Heritage Preservation Overlay District for:

1. Certificates of Appropriateness.
 2. Sign Permits.
 3. Master Sign Plans
 4. Modification for Master Sign Plan for Individual Establishment
- (c) To make its special knowledge and expertise available upon its own initiative or upon request by the Town Council or any official, department, board, commission or agency of the Town.
- (3) Membership**
- (a) The HPRB shall consist of 7 members. They shall be comprised of the 5 members of the Town's Architectural Review Board (ARB), along with 2 additional members.
- (b) The membership of the HPRB shall meet the following minimum qualifications:
1. At least 1 member shall have a demonstrated interest, competence, or knowledge in historic preservation.
 2. At least 1 member shall be an architect or an architectural historian, and have appropriate professional qualifications to qualify as an expert in the area of historic preservation.
 3. One member may be a non-resident of the Town.
- (c) The ARB members serving on the HPRB shall be appointed pursuant to Part I, Charter, of the Code of Ordinances, Section 7.4:1(b). The 2 additional members shall be appointed by a majority of the Town Council.
- (d) The term of office of the ARB members serving on the HPRB shall be concurrent with their membership on the ARB. The terms of the 2 additional members shall be 3 years.
- (e) Any member who resigns from the HPRB prior to the end of the member's term shall do so in writing to the Chair.
- (f) Any member of the HPRB may be removed from office by the Town Council for malfeasance, misfeasance or nonfeasance in office.
- (g) Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term in the same manner as the original appointment.
- (h) Members' compensation, if any, shall be fixed by resolution of the Town Council.
- (i) Newly appointed members shall be offered training and certification by the Citizens Planning Education Association of Virginia or similar certification to be completed within two years of appointment.
- (4) Chair and Vice-Chair**
- (a) The HPRB shall elect from its members a Chair and a Vice-Chair.
- (b) The term of office of the Chair and Vice-Chair shall be one year.
- (c) General Duties of Officers
1. The Chair shall preside at meetings of the HRPB, decide points of order on procedure, and take such action as shall be necessary to preserve the order and integrity of proceedings before the HPRB.
 2. In the absence of the Chair, the Vice-Chair shall act as Chair and shall have powers of the Chair.

3. In the absence of the Chair and Vice-Chair, the most senior HPRB member shall act as Chair and shall have powers of the Chair.

(5) Staff

The Zoning Administrator or the Zoning Administrator's designee shall serve as the professional staff to the HPRB and provide it with administrative support.

(6) Meetings, Hearings and Procedures

- (a) Meetings of the HPRB ordinarily shall be held monthly and at such other times as a quorum of the HPRB may determine.
(b) All meetings of the HPRB shall be open to the public.

(7) Quorum and Necessary Vote

Four members of the HPRB shall constitute a quorum, and no action of the HPRB shall be valid unless authorized by a majority vote of those present and voting.

(8) Rules

- (a) The HPRB shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or abstaining from a vote, indicating that fact.
(b) The HPRB shall keep records of its official actions, which shall be immediately filed in the office of the Zoning Administrator and shall be a public record.
(c) The HPRB may, by a majority vote of the entire membership, draft and approve such additional bylaws governing its procedure as it may deem necessary or advisable.

(F) Architectural Review Board

The provisions of the Town Charter Section 7.4:1 and Chapter 58 of the Herndon Town Code establish and govern the Architectural Review Board (ARB) and its powers and duties. Generally, the ARB is empowered by the Town Charter and the Town Council to review and approve structures, buildings, signs, major landscape features and other improvements for development ~~other than excluding: (i) the heritage preservation overlay district, (ii) single family detached residences in the R-15 and R-10 zoning districts, and (iii) single family detached residences in planned development districts after initial construction. except within planned development zoning districts for single family detached residences.~~ For purposes of this Chapter, the ARB is authorized to review and make decisions on Sign Permits (~~Section 78-202(H)(4)~~) and Master Sign Plans (Section ~~78-202(G)(4)~~ ~~78-202(H)(5)~~), and make its special knowledge and expertise available upon written request and authorization of the Town Council to any official, department, board, commission, or agency of the Town. Newly appointed members shall be offered training and certification by the Citizens Planning Education Association of Virginia or similar certification to be completed within two years of appointment.

(G) Zoning Administrator

- (a) The Zoning Administrator is designated by the Town Manager to administer and enforce this Chapter. The Zoning Administrator may appoint one or more deputies (designees) to carry out the assigned duties of the Zoning Administrator. In this chapter, any reference to "zoning administrator" shall include deputies (designees.)
(b) The Zoning Administrator or an appropriate designee acting as Zoning Administrator shall have the following jurisdiction, powers, and duties under this Chapter:

1. To Review and Decide Applications for:
 - a. ~~Site~~ Plans that May be Approved Administratively (Section 78-202(F)(3)).
 - b. Temporary Use Site Plans ~~Permits~~ (Section ~~78-202(G)~~ 78-202(F)(3)(f))).
 - c. Administrative Adjustments (Section 78-202(E)).
 - d. Master Sign Plan Conformance Permit (Section ~~78-202(G)(5)~~ 78-202(H)(6)).
 - e. Administrative Sign Approvals (Section 78-202(G)(7)).
 - f. Zoning Inspection Permit (Section ~~78-202(J)~~ 78-202(I)).
 - g. Zoning Appropriateness Permit (Section ~~78-202(J)~~ 78-202(K)).
2. To make determinations about interpreting this Chapter, proffers and the official zoning map (Section 78-202(K)).
3. To establish application requirements and schedules for review of applications and appeals, to review and make recommendations to the Town Council, Planning Commission, HPRB, and ARB on applications for development permits and approvals, and take any other action necessary to administer the provisions of this Chapter.
4. To enforce the provisions of this Chapter in accordance with Section 78-203, *Enforcement and Remedies*.
5. To maintain the Official Zoning Map and other such records and official materials as they relate to the adoption, amendment, enforcement, or administration of this Chapter
6. To provide expertise and technical assistance to the Town Council, Planning Commission, BZA, HPRB, and ARB, upon request.
7. To obtain training, education and appropriate certifications in order to develop and maintain necessary knowledge and skills, under the Town's sponsorship.

78-201 Review Procedures

The general provisions of this Section shall apply to applications for development approval and permit requests under this Chapter, unless otherwise stated.

(A) Authority to File Applications

(1) To Whom and By Whom Submitted

Applications required pursuant to this Chapter shall be submitted to the Zoning Administrator by the land owner or contract purchaser of the land upon which the development is proposed, an authorized agent, or any other person authorized by state law.

(2) Applicant Is Not the Owner

If the applicant is an agent of the owner or a contract purchaser of the land, a letter signed by the owner consenting to the submittal of the application shall be submitted.

(3) Applicant is Not the Sole Owner

If the applicant is not the sole owner of the land, the other owners or an entity representing the owners shall sign and submit a letter indicating their consent for the application and their role in the application.

(B) Establishment of Application Requirements, Schedule, and Fees**(1) Application Contents**

The Zoning Administrator shall establish reasonable requirements for the content and form of applications for development approval and permits required under this Chapter, and may update those requirements from time to time.

(2) Submittal Schedule

The Zoning Administrator shall establish a schedule that controls the timing for submittal of applications, and may amend and update those requirements from time to time. The schedule shall be in accordance with the provisions of this Article and shall be kept on file in the Department of Community Development.

(3) Fees

- (a)** The Town Council shall, by ordinance, establish application fees and may amend and update those fees from time to time. The fee amount shall defray some or all of the estimated cost of processing the application.
- (b)** A filing fee as required in this sub section shall be paid as part of the submission of an application or element thereof.
- (c)** Fees

Table 78-201(B)(3)(c): Fees for Development Applications

| Type of Fee | Amount of Fee |
|--|---------------|
| 1. ARCHITECTURAL REVIEW BOARD | |
| a. new construction (includes landscape plan) | \$150 |
| b. exterior alterations or additions to existing structures, accessory structures | \$150 |
| c. sign permit application | \$75 |
| d. amendments to approved permits | \$75 |
| 2. HERITAGE PRESERVATION REVIEW BOARD | |
| a. certificate of appropriateness for new construction (includes landscape plan) or demolition | \$150 |
| b. certification of appropriateness for exterior alterations or additions to existing structures, accessory structures | \$150 |
| c. sign permit application | \$75 |
| d. amendments to approved certificates of appropriateness | \$75 |
| e. application for a certificate of appropriateness, residential use, other than new construction | \$1 |
| 3. BOARD OF ZONING APPEALS | |
| a. single variance request | \$100 |
| b. each additional section variance request | \$25 |
| c. appeal | \$100 |
| 4. BONDING FEES | |
| a. performance bond | \$250 |
| b. letter of credit | \$250 |
| c. conservation cash escrow agreement | \$250 |
| d. request for extension of time for performance bond contract | \$400 |
| e. request for reduction of the amount of a performance bond, letter of credit or cash account | \$600 |
| f. request to replace a performance bond, letter of credit or cash account | \$250 |
| g. performance bond, letter of credit or cash account contract | \$250 |
| h. request to waive the requirement for submittal of a maintenance bond | \$75 |

| Table 78-201(B)(3)(c): Fees for Development Applications | | |
|---|---|---|
| Type of Fee | | Amount of Fee |
| 5. COMPREHENSIVE PLAN AMENDMENT | | \$1,000 per request |
| 6. ZONING MAP AMENDMENT | | |
| a. application | | \$5,000 plus \$250 per nearest quarter of an acre |
| b. for planned development: request to extend time period of approval (prior to expiration of approval) | | \$2,500 plus \$250 per nearest quarter of an acre |
| c. for planned development: | request to amend uses listed in approved proffers | \$300 |
| | request for modification | \$300 per section of the zoning ordinance for which a modification is requested |
| d. request to waive time limit for re-application for zoning map amendments | | \$100 per request |
| 7. OTHER REVIEWS WHETHER SUBMITTED SEPARATELY OR CONCURRENTLY WITH ANOTHER APPLICATION | | |
| a. traffic impact study review (as required) | | \$500 plus one half of town consultant fee, if consultant review is required |
| b. minor water quality impact assessment (as required) | | \$50 |
| c. major water quality impact assessment (as required) | | \$500 |
| d. request for an exception to the provisions of Chesapeake Bay Preservation Area Overlay District (Section 78-304(D)(13)) | | \$100 |
| e. request for an administrative waiver of the provisions of Chesapeake Bay Preservation Area Overlay District (Section 78-304(D)(14)) | | \$100 |
| f. request for approval of a site specific delineation for the Resource Protection Area as provided in the Chesapeake Bay Preservation Area Overlay District (Section 78-304(D)(5)) | For an area of less than 5,000 square feet | \$50 |
| | For an area of 5,000 square feet or more | \$500 |
| g. floodplain study | | \$1,000 plus one-half of town consultant fee, if consultant review is required |
| 8. SPECIAL EXCEPTION | | |
| a. application: residential uses | | \$300 |
| b. application: use categories of Education, Government Facilities, or Institutional and Community Service | | \$300 |
| c. application: all other nonresidential uses with no site alterations and no alterations to the size of the affected building | | \$300 |
| d. application: all other nonresidential uses with site alterations or alterations to the size of the affected building | | \$1,500 |
| e. request to extend time period of approval (prior to expiration of approval), all uses | | \$300 |
| f. request to waive time limit for re-application | | \$100 per request |
| 9. SITE PLAN | | |
| a. application fee for site plans that require a public hearing | | \$2,000 plus \$250 per |

Table 78-201(B)(3)(c): Fees for Development Applications

| Type of Fee | Amount of Fee |
|--|---|
| (including certain revisions) | nearest quarter of an acre |
| b. application fee for plans that may be approved administratively (including certain revisions and minor site plans) except single lot development plans, temporary use site plans, and building location surveys | \$200 per plan sheet |
| c. Other fees for all site plans (except single lot development) Other Fees for All Site Plans (Except Single Lot Development) | |
| i. resubmission | \$200 per plan sheet changed |
| ii. request to extend time period of approval (prior to expiration of approval) | See Site Plan application |
| iii. waiver request | \$200 per section of the zoning ordinance or public facilities manual for which waivers are requested |
| iv. construction: bituminous surface | \$0.51 per square yard |
| v. construction: curb and gutter | \$0.92 per linear foot |
| vi. construction: header curb | \$0.92 per linear foot |
| vii. construction: sanitary sewer | \$2.34 per linear foot |
| viii. construction: screening | \$2.34 per linear foot |
| ix. construction: Sidewalk | \$1.35 per linear foot |
| x. construction: storm drainage | \$4.39 per linear foot |
| xi. construction: TV inspection of pipe | \$2.32 per linear foot |
| xii. construction: waterline | \$1.75 per linear foot |
| xiii. construction: bioretention facilities (rain gardens) | \$250 per facility |
| xiv. construction: over lot grading and surface drainage | \$200 per division of land or per disturbed acre whichever is the higher total |
| xv. construction: stormwater detention and Best Management Practice (BMP) measures other than rain gardens | \$1,000 per measure to be evaluated |
| xvi. construction: streetlights | \$50 per light |
| xvii. construction: inspection following a violation | \$160 per inspection |
| xviii. plat and deeds of easement or dedication | \$200 per plat |
| xix. grading plan (not part of a site plan) | See Chapter 26, Article III, Section 26-51, <i>Issuance of Land Disturbing Permit</i> |
| xx. as-built site plan | \$50 per sheet |
| d. single lot development Single Lot Development | |
| i. initial submission | \$750 |
| ii. second submission | None |
| iii. third and successive submissions | \$100 |
| e. building location survey | \$25 |
| f. temporary use site plan | |
| i. for uses of less than 90 consecutive days in duration | -0- |
| ii. for uses of 90 days duration of longer | \$75 |
| iii. resubmission | \$75 |
| iv. waiver request of zoning provisions other than submittal requirements | \$75 per section of the zoning ordinance or public facilities manual for which a waiver is requested. |

| Table 78-201(B)(3)(c): Fees for Development Applications | |
|---|--|
| Type of Fee | Amount of Fee |
| 10. PRELIMINARY SUBDIVISION PLAN | |
| a. application: one through five lots | \$750 plus \$30 per lot, parcel or out lot |
| b. application: six through ten lots | \$1,000 plus \$30 per lot, parcel or out lot |
| c. application: more than ten lots | \$1500 plus \$30 per lot, parcel or out lot |
| d. resubmission | \$200 per plan sheet changed |
| e. revision to an approved preliminary subdivision plan | See preliminary subdivision plan application |
| f. request to extend time period of approval (prior to expiration of approval) | See preliminary subdivision plan application |
| g. subdivision chapter waiver request | \$200 per section of the subdivision ordinance or public facilities manual for which waivers are requested |
| 11. SUBDIVISION SITE PLAN | |
| a. first submission | \$1,000 per acre, plus \$250 per quarter acre |
| b. resubmission | \$200 per plan sheet changed |
| c. revision not requiring Town Council approval (following approval) | \$200 per plan sheet changed |
| d. construction: curb and gutter | \$0.92 per linear foot |
| e. construction: linear feet of street | \$1.20 per linear foot |
| f. construction: sidewalk | \$1.35 per linear foot |
| g. construction: sanitary sewer | \$2.34 per linear foot |
| h. construction: storm drainage | \$4.39 per linear foot |
| i. construction: TV inspection of pipe | \$2.32 per linear foot |
| j. construction: waterline | \$1.75 per linear foot |
| k. construction: bioretention facilities (rain gardens) | \$250 per facility |
| l construction: over lot grading and surface drainage | \$200 per division of land or per disturbed acre, whichever is greater |
| m. construction: stormwater detention and Best Management Practice (BMP) measures other than rain gardens | \$1,000 per measure to e evaluated |
| n. construction: streetlights | \$50 per light |
| o. construction: inspection following a violation | \$160 per inspection |
| p. sketch plan | \$0 |
| q. rough grading plan (not otherwise part of a subdivision application) | See Chapter 26, Article III, Section 26-51, <i>Issuance of Land Disturbing Permit</i> |
| 12. SUBDIVISION PLATS | |
| a. final subdivision plat and deed, first submission | \$300 plus \$30 per lot |
| b. request to extend time period of approval of final subdivision plat (prior to expiration of approval) | \$200 per plat |

Table 78-201(B)(3)(c): Fees for Development Applications

| Type of Fee | | Amount of Fee |
|---|---|---|
| c. correction of recorded plat | | \$200 per plat |
| d. plat and deed of condominium | | \$300 plus \$30 per subdivided lot |
| e. plat and deed of easement (creation, relocation, dedication, vacation) | | \$200 per plat |
| f. plat and deed of vacation of right-of-way | | \$150 per plat |
| g. plat and deed of lot line adjustment | | \$250 per plat |
| h. plat and deed of consolidation | | \$250 per plat |
| i. plat and deed resubmissions | | \$100 per document changed |
| 1413. REQUEST FOR THE ZONING ADMINISTRATOR TO GRANT AN ADMINISTRATIVE ADJUSTMENT | | \$50 per building affected by the request |
| 1414. ZONING VERIFICATION LETTER | single family dwelling or an undeveloped parcel of land zoned for single family detached uses | \$50 |
| | all other property or uses | \$300 |
| 15. ZONING INSPECTION PERMIT | | \$25 per inspection |
| 16. RE-ADVERTISEMENT OF APPLICATION FOR ANY REQUEST RECEIVED BY THE ZONING ADMINISTRATOR FOR A DELAY OF A PUBLIC HEARING FOLLOWING PUBLIC NOTIFICATION OF THE PUBLIC HEARING OR CONTINUATION AT THE REQUEST OF THE APPLICANT | | \$150 per public hearing |
| 1647. FEE FOR REGISTRATION TO RECEIVE NOTICE OF ZONING AND SUBDIVISION APPLICATIONS | By U. S. mail | \$25 per year |
| | By electronic mail | \$10 per year |

(4) User Guide

The Zoning Administrator will compile and maintain a Zoning Ordinance User's Guide that includes such supplemental information to aid the public in complying successfully with the standards of this Chapter.

(C) Common Submittal Requirements

In most cases, any application for a development approval or other permit shall include the following items. Additional ~~submittal~~ requirements are described in Section 78-202, *Specific Standards and Other Requirements for Applications for Development Approval*. ~~For applications for subdivisions of land, see Chapter 70 of the Herndon Town Code.~~

- (1) ~~Application~~ A completed application form provided by the Town and signed by the owner(s) or owner's agent(s).
- (2) ~~Payment of Fees~~ Payment of required fee(s) as indicated in Section 78-201(B)(3).
- (3) ~~Agent Authorization~~ A statement of authorization from a landowner or other party authorizing an agent to act upon their behalf (if applicable).
- (4) ~~Pre-application Conference~~ If a pre-application conference took place, a statement indicating the date and time a pre-application conference was held with the Town, as well as a list of participants in the conference.
- (5) ~~Neighborhood Meeting~~ A statement indicating the date, time, location, invitation list, number of attendees, and outcome of a neighborhood meeting if one was held prior to application submittal.

- (6) ~~Delinquent Taxes Paid~~ A receipt or other documentation indicating that any delinquent taxes owed on lands subject to the application have been paid.
- (7) ~~Plan Other Drawing~~ If the application requires a plan or drawing, ~~nine (9) sets of plans or drawings~~ it shall be prepared in accordance with the following rules:
- (a) ~~Plans Prepared by Authorized Persons~~ Site plans, single lot development plans, ~~and~~ generalized development plans, preliminary subdivision plans, and subdivision site plans, plats, surveys, or any portion thereof, involving engineering, architecture, landscape architecture or land surveying, shall be prepared and certified respectively by an engineer, architect, landscape architect or land surveyor duly authorized by the state to practice as such.
- ~~1. Other plans shall be drawn to scale and signed by the preparer.~~
- (b) Plans may be prepared in one or more sheets to show clearly the information required by this section ~~division~~ and to facilitate the review and approval of the plan. If prepared in more than one sheet, match lines shall clearly indicate where the several sheets join.
- (c) The number of plans or drawings required for each type of application shall be determined by the zoning administrator.
- ~~Plans shall include:~~
- ~~1. the name and address of the owner and developer;~~
 - ~~2. tax map reference number and street address of the subject property;~~
 - ~~3. Town, county, state;~~
 - ~~4. north point;~~
 - ~~5. date;~~
 - ~~6. scale of drawing;~~
 - ~~7. number of sheets; and~~
 - ~~8. a blank space three inches wide and five inches high for the use of the approving authority if not required to use an official Town cover sheet.~~
- (d) Plans shall be prepared with the following scales:
1. generalized development plans and preliminary subdivision plan: to a scale of one inch equals 50 feet or larger.
 2. single lot development plans, site plans that require a public hearing and subdivision site plans: one inch equals 30 feet or larger.
 3. Other plans (such as minor site plans, temporary use site plans, or administrative adjustment plans) shall be drawn to scale and signed by the preparer.
- (e) Sheet Size shall not exceed ~~The sheets for site plans or generalized development plans shall be~~ 24 by 36 inches. Profiles must be submitted on standard plan profile sheets.
- ~~(i) Other plans shall be on sheets of appropriate size to depict adequately the subject of the application.~~
- (f) All lettering on plans shall be ~~be~~ not be less than one-tenth of an inch in height.
- (g) All horizontal distances shown on plans shall be in feet and decimals of a foot to the closest 1/100 of a foot, and all bearings in degrees, minutes and seconds to the nearest ten seconds.
- (h) All copies shall be clearly legible blue or black line copies.
- (8) Contents of Plans

1
2
3
4
5
6
7

Plans submitted with applications for a zoning map amendment, special exception, site plan that requires a public hearing, preliminary subdivision plan, and subdivision site plan shall contain the information indicated in Table 78-201(C)(8). Plans submitted with applications for single lot developments, minor site plans, and temporary uses shall contain the information indicated in Table 78-202(F)(3)(C)(8).

| Table 78-201(C)(8): CONTENT REQUIREMENTS FOR PLANS SUBMITTED WITH APPLICATIONS FOR A ZONING MAP AMENDMENT, SPECIAL EXCEPTION, SITE PLANS THAT REQUIRE A PUBLIC HEARING, PRELIMINARY SUBDIVISION PLAN, AND SUBDIVISION SITE PLAN | | | | | |
|--|--|-------------------------------|---|---|----------------------------------|
| | Key: • <u>Required information</u> | GDP* (if submitted) | Site Plan that requires a public hearing | Preliminary Subdivision Plan | Subdivision Site Plan |
| | GENERAL INFORMATION | | | | |
| <u>1</u> | <u>Town Cover Sheet filled out</u> | • | • | • | • |
| <u>2</u> | <u>North arrow</u> | • | • | • | • |
| <u>3</u> | <u>Date each plan sheet prepared and all revision dates</u> | • | • | • | • |
| <u>4</u> | <u>Scale of drawings</u> | • | • | • | • |
| <u>5</u> | <u>Index showing number of sheets and title of each sheet</u> | • | • | • | • |
| <u>6</u> | <u>Current zoning;</u> | • | • | • | • |
| <u>7</u> | <u>Total site area;</u> | • | • | • | • |
| <u>8</u> | <u>Proposed uses;</u> | • | • | • | • |
| <u>9</u> | <u>Location of tract by an insert map at a scale of not less than one inch equals 2,000 feet, indicating scaled coordinates referred to in NGS; A north direction arrow referenced to the Virginia Coordinate System of 1983 (VCS 83); and such information as the names and numbers of adjoining roads, streams and bodies of water, railroads, subdivisions, towns and magisterial districts or other landmarks sufficient to clearly identify the location of the property;</u> | | • | | • |
| <u>10</u> | <u>A boundary survey of the tract with an error of closure within the limit of one in 10,000 related to the true meridian and showing the location and type of boundary evidence, and boundary credit, where done by others;</u> | • | • | • | • |
| <u>11</u> | <u>Certificate signed by the surveyor or engineer setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title;</u> | | • | | |
| <u>12</u> | <u>Topography credit, where done by others;</u> | • | • | • | • |
| <u>13</u> | <u>Reference datum</u> | | • | | • |
| <u>14</u> | <u>Seal and signature of preparer on each sheet</u> | • | • | • | • |
| <u>15</u> | <u>Match lines, if prepared on more than one sheet, to clearly indicate where the several sheets join.</u> | • | • | • | • |

**Table 78-201(C)(8): CONTENT REQUIREMENTS FOR PLANS SUBMITTED WITH APPLICATIONS
FOR A ZONING MAP AMENDMENT, SPECIAL EXCEPTION, SITE PLANS THAT REQUIRE A PUBLIC HEARING,
PRELIMINARY SUBDIVISION PLAN, AND SUBDIVISION SITE PLAN**

| | Key: • Required information | GDP* (if submitted) | Site Plan that requires a public hearing | Preliminary Subdivision Plan | Subdivision Site Plan |
|----|--|---------------------------|--|------------------------------------|--------------------------|
| | EXISTING CONDITIONS to be shown on a sheet or sheet separate from the proposed features and including: | | | | |
| 16 | Owner, zoning, and present use of all adjacent property; | • | • | • | • |
| 17 | Within 10 feet of the site, features on adjoining properties including: departing property lines, drip line of trees, easements, to be shown on all sheets | • | • | • | • |
| 18 | Existing topography with a maximum of two-foot contour intervals. | • | • | • | • |
| 19 | Where existing ground is on a slope of less than two percent: either one-foot contours or spot elevations where necessary but not more than 50 feet apart in both directions; | | • | | • |
| 20 | Existing topography extending at least 25 feet beyond the boundary of the site; | | • | | • |
| 21 | Natural features, including drainage divides and 100 year flood plain; | • | • | • | • |
| 22 | A delineation of those general areas that have scenic assets or natural features deserving of protection and preservation, and a statement of how such will be accomplished; | • | | • | |
| 23 | Watercourses and their names; | • | • | • | • |
| 24 | Site specific delineation of Resource Protection Areas, and a water quality impact assessment, if required, and any other information required in Herndon Town Code Section 78-304(D), Chesapeake Bay Preservation Overlay District. | • | • | • | • |
| 25 | Identification of soil characteristics; | | • | | • |
| 26 | Structures; | | • | • | • |
| 27 | Existing streets abutting or through the site; | • | • | • | • |
| 28 | Right-of-way lines, width, category of street, and edge of pavement | • | • | • | • |
| 29 | Existing streets abutting or through the site, including: right-of-way lines, width and category of street, and name and route number; | • | • | • | • |
| 30 | Street centerline with stations and points of curvature, slopes and radii of curves; | | • | • | • |

**Table 78-201(C)(8): CONTENT REQUIREMENTS FOR PLANS SUBMITTED WITH APPLICATIONS
FOR A ZONING MAP AMENDMENT, SPECIAL EXCEPTION, SITE PLANS THAT REQUIRE A PUBLIC HEARING,
PRELIMINARY SUBDIVISION PLAN, AND SUBDIVISION SITE PLAN**

| | Key: • Required information | GDP* (if submitted) | Site Plan that requires a public hearing | Preliminary Subdivision Plan | Subdivision Site Plan |
|-----|---|------------------------|--|------------------------------------|--------------------------|
| 31 | Existing easements traversing the property, with size, on site and on adjoining properties for: sanitary sewer with flow direction indicated: storm sewer; water; streets, alleys, driveways, walkways and the like; gas, electric, telephone; slopes; grading; and other; | • | • | • | • |
| 32 | Existing above and below ground utilities, including, electric, communications, and the like; | | • | | • |
| 33 | All existing water, sanitary sewer and storm sewer facilities, and, fire hydrants indicating pipe sizes | • | • | • | • |
| 34 | For existing water, sanitary sewer and storm sewer facilities, and, fire hydrants: show flow direction, types and grades and where connection is made to the town or other utility system; | | • | | • |
| 35 | Statement of burial sites present or absent | • | • | • | • |
| 36 | SURVEY of EXISTING TREES prepared by an ISA Certified Arborist, shown on one sheet, and including; | • | • | • | |
| 36a | The existing tree canopy cover; | • | • | • | |
| 36b | Existing trees having a caliper of eight inches or greater when measured four feet, six inches above the ground, or a tree stand delineation as approved for group identification by the community forester; | • | • | • | • |
| 36c | Ornamental trees including, but not limited to: Dogwood (Cornus), American Holly (Ilex opaca), Shadblow (Amelanchier species), Eastern Redbud (Cercis canadensis) and Fringe Tree (Chionanthus virginicus) having a caliper of two to four inches measured at six inches above the ground or a caliper greater than four inches measured at 12 inches above the ground shall also be included in the inventory; | • | • | • | • |
| 36d | Groups of trees and individual trees standing alone that will be retained on the site, including designated "tree protection areas," shall be accurately identified, located on the tree survey, and shown on the plan of proposed development | • | • | • | • |
| 36e | All trees located off-site which have drip lines extending into the site shall be shown and considered as within the site for purposes of | • | • | • | • |

**Table 78-201(C)(8): CONTENT REQUIREMENTS FOR PLANS SUBMITTED WITH APPLICATIONS
FOR A ZONING MAP AMENDMENT, SPECIAL EXCEPTION, SITE PLANS THAT REQUIRE A PUBLIC HEARING,
PRELIMINARY SUBDIVISION PLAN, AND SUBDIVISION SITE PLAN**

| | Key: • Required information | GDP* (if submitted) | Site Plan that requires a public hearing | Preliminary Subdivision Plan | Subdivision Site Plan |
|------------|--|---------------------------|--|------------------------------------|--------------------------|
| | <u>protective field practices;</u> | | | | |
| | <u>PROPOSED CONDITIONS:</u> | | | | |
| <u>37</u> | <u>Information to be Shown IN TABULAR FORM indicating (a) the zoning provision for the minimum required or maximum permitted, and (b) proposed.</u> | | | | |
| <u>37a</u> | <u>lot area devoted to each land use;</u> | • | • | • | • |
| <u>37b</u> | <u>lot width; corner (or end) and interior;</u> | • | • | • | • |
| <u>37c</u> | <u>setbacks;</u> | • | • | • | • |
| <u>37d</u> | <u>side yard: total of combined side yards, where applicable;</u> | • | • | • | • |
| <u>37e</u> | <u>rear yard;</u> | • | • | • | • |
| <u>37f</u> | <u>total site area;</u> | • | • | • | • |
| <u>37g</u> | <u>lot area and lot area as percentage of total area</u> | • | • | • | • |
| <u>37h</u> | <u>number of lots;</u> | • | • | • | • |
| <u>37i</u> | <u>density (dwellings per acre)</u> | • | • | • | • |
| <u>37j</u> | <u>average lot size;</u> | | | • | • |
| <u>37k</u> | <u>building coverage (area of building footprint(s) as share of total site);</u> | | • | | • |
| <u>37l</u> | <u>floor area ratio (where applicable);</u> | • | • | | |
| <u>37m</u> | <u>floor area by use;</u> | | • | | • |
| <u>37n</u> | <u>number of floors;</u> | | • | | • |
| <u>37o</u> | <u>height of buildings;</u> | • | • | • | • |
| <u>37p</u> | <u>for residential buildings, the number, size and type of dwelling units;</u> | | • | • | • |
| <u>37q</u> | <u>number of parking spaces</u> | • | • | • | • |
| <u>37r</u> | <u>parking ratio;</u> | • | | • | |
| <u>37s</u> | <u>parking spaces for persons with disabilities;</u> | • | • | | • |
| <u>37t</u> | <u>amount of impervious surface;</u> | • | • | • | • |
| <u>37u</u> | <u>area of dedicated right-of-way;</u> | • | • | • | • |
| <u>37v</u> | <u>open space as percentage of total site or lot area (as applicable);</u> | | • | • | • |
| <u>37w</u> | <u>chart of required and proposed plant materials conforming to the requirements of this Chapter;</u> | • | • | • | • |
| <u>37x</u> | <u>schedule of the proposed plant species, size, common and botanical name;</u> | | • | | • |
| | | | | | |

**Table 78-201(C)(8): CONTENT REQUIREMENTS FOR PLANS SUBMITTED WITH APPLICATIONS
FOR A ZONING MAP AMENDMENT, SPECIAL EXCEPTION, SITE PLANS THAT REQUIRE A PUBLIC HEARING,
PRELIMINARY SUBDIVISION PLAN, AND SUBDIVISION SITE PLAN**

| | Key: • Required information | GDP* (if submitted) | Site Plan that requires a public hearing | Preliminary Subdivision Plan | Subdivision Site Plan |
|-----------|---|---------------------------|--|------------------------------------|--------------------------|
| | <u>Site Information to be shown on the plan</u> | | | | |
| <u>38</u> | <u>Overall site layout plan showing all phases of development ;</u> | <u>•</u> | <u>•</u> | <u>•</u> | <u>•</u> |
| <u>39</u> | <u>Lot numbers and lot size on each lot;</u> | <u>•</u> | <u>•</u> | <u>•</u> | <u>•</u> |
| <u>40</u> | <u>Lot lines dimensioned;</u> | | <u>•</u> | <u>•</u> | <u>•</u> |
| <u>41</u> | <u>Front setback, side yard and rear yard labeled and dimensioned;</u> | | <u>•</u> | <u>•</u> | <u>•</u> |
| <u>42</u> | <u>Proposed finished grading by contours supplemented where necessary by spot elevations;</u> | | <u>•</u> | | <u>•</u> |
| <u>43</u> | <u>Proposed water and sanitary sewer facilities, indicating pipe sizes, types and grades and where connection is to be made to the town or other utility system;</u> | | <u>•</u> | | <u>•</u> |
| <u>44</u> | <u>Provisions for fire protection;</u> | | <u>•</u> | | <u>•</u> |
| <u>45</u> | <u>Stormwater management narrative setting forth existing site conditions, run-off conditions on adjacent properties, proposed detention methods, proposed method for meeting stormwater management requirements, and review of outfall adequacy;</u> | <u>•</u> | <u>•</u> | <u>•</u> | <u>•</u> |
| <u>46</u> | <u>Provisions for the adequate disposition of natural water and stormwater in accordance with the duly adopted design criteria and standards of the town, indicating location, sizes, types and grades of ditches, catch basins and pipes and connections to existing drainage system.;</u> | | <u>•</u> | | <u>•</u> |
| <u>47</u> | <u>Provision for the adequate control of erosion and sedimentation, indicating the proposed temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading and construction;</u> | | <u>•</u> | | <u>•</u> |
| <u>48</u> | <u>Proposed easements, with size, on site and on adjoining properties for: sanitary sewer with flow direction indicated: storm sewer; water; streets, alleys, driveways, walkways and the like; gas, electric, telephone; slopes; grading; and other easements;</u> | <u>•</u> | <u>•</u> | <u>•</u> | <u>•</u> |
| <u>49</u> | <u>Common or shared easements to franchised cable television operators furnishing cable television and to public service corporations furnishing cable television, gas, telephone and electric service to the</u> | | | <u>•</u> | |

**Table 78-201(C)(8): CONTENT REQUIREMENTS FOR PLANS SUBMITTED WITH APPLICATIONS
 FOR A ZONING MAP AMENDMENT, SPECIAL EXCEPTION, SITE PLANS THAT REQUIRE A PUBLIC HEARING,
 PRELIMINARY SUBDIVISION PLAN, AND SUBDIVISION SITE PLAN**

| | <u>Key:</u> • <u>Required information</u> | <u>GDP*</u> <u>(if submitted)</u> | <u>Site Plan</u> <u>that</u> <u>requires a</u> <u>public</u> <u>hearing</u> | <u>Preliminary</u> <u>Subdivision</u> <u>Plan</u> | <u>Subdivision</u> <u>Site Plan</u> |
|-----------|--|--------------------------------------|---|---|--|
| | <u>proposed subdivision according to the standards of State subdivision law.</u> | | | | |
| <u>50</u> | <u>Proposed above and below ground utilities, including electric, communications, and the like;</u> | • | • | • | • |
| <u>51</u> | <u>Proposed existing water, sanitary sewer and storm sewer, and fire hydrants indicating pipe sizes;</u> | • | • | • | • |
| <u>52</u> | <u>For proposed water, sanitary sewer, storm sewer, and fire hydrants: show flow direction, types and grades and where connection is made to the town or other utility system;</u> | | • | | • |
| <u>53</u> | <u>Building restriction lines;</u> | • | • | • | • |
| <u>54</u> | <u>Proposed distance of setbacks and yards for each building;</u> | • | • | • | • |
| <u>55</u> | <u>Foot prints of buildings and other structures;</u> | • | • | • | • |
| <u>56</u> | <u>Dimensions of buildings and other structures;</u> | | • | | • |
| <u>57</u> | <u>Finished floor elevations;</u> | | • | | • |
| <u>58</u> | <u>Location, type and size of pedestrian and vehicular circulation facilities on the site;</u> | • | • | • | • |
| <u>59</u> | <u>Design of vehicular entrances and exits in relation to streets giving access to the site and in relation to pedestrian traffic;</u> | • | • | • | • |
| <u>60</u> | <u>Hike and bike trail system per town comprehensive plan;</u> | • | • | • | • |
| <u>61</u> | <u>Proposed streets abutting or through the site, including:</u> <u>right-of-way lines, width and category of street, and name and route number;</u> | • | • | • | • |
| <u>62</u> | <u>Street centerline with stations and points of curvature, slopes and radii of curves;</u> | | • | • | • |
| <u>63</u> | <u>Parking areas (on and off-street); size and angle of stalls, loading spaces, associated walkways, type of surfacing, and aisle widths;</u> | • | • | • | • |
| <u>64</u> | <u>Location and design of inter-parcel access;</u> | • | • | • | • |
| | | | | | |
| | <u>Information about Landscaping and Open Space to be shown on the plan</u> | | | | |
| <u>65</u> | <u>The limits of clearing shall be located at the outermost limits of the area to be cleared, shall be accurately shown and labeled, shall not include any unnecessary clearing, and shall be shown on the</u> | • | • | • | • |

**Table 78-201(C)(8): CONTENT REQUIREMENTS FOR PLANS SUBMITTED WITH APPLICATIONS
 FOR A ZONING MAP AMENDMENT, SPECIAL EXCEPTION, SITE PLANS THAT REQUIRE A PUBLIC HEARING,
 PRELIMINARY SUBDIVISION PLAN, AND SUBDIVISION SITE PLAN**

| | Key: • Required information | GDP* (if submitted) | Site Plan that requires a public hearing | Preliminary Subdivision Plan | Subdivision Site Plan |
|-----|---|------------------------|--|------------------------------------|--------------------------|
| | <u>plan of proposed development;</u> | | | | |
| 66 | <u>Description of location and type of alien, invasive plant species to be removed from the site in accordance with Section 78-503(I)(1)(b);</u> | | • | | • |
| 67 | <u>The location of tree wells and tree walls shall be accurately located on the site plan;</u> | | • | | • |
| 68 | <u>All trees within the site and shown to be saved on the site plan shall be shown according to the total spread of the tree canopy/crown/cover at the drip line;</u> | | • | | • |
| 69 | <u>Applicable diagrams of standard tree protection devices;</u> | | • | | • |
| 70 | <u>There shall be a notation on the site plan prohibiting disturbance inside the tree protection areas. Prohibited disturbance includes, but is not limited to: grading, clearing, storage of materials, dumping of materials, and parking or transporting of vehicles and equipment;</u> | | • | | • |
| 71 | <u>Methods of proposed irrigation and drainage for maintenance of required landscaping;</u> | | • | | • |
| 72 | <u>Drawings showing plating details for landscape materials proposed to be placed on the site;</u> | | • | | • |
| 73 | <u>Provisions for monuments to be placed on the site;</u> | | • | | • |
| 74 | <u>Location of open space and recreation facilities, with associated calculations showing amount and type per Herndon Town Code Section 78-504;</u> | • | | • | |
| 75 | <u>Landscape Plan in accordance with Section 78-503(C)(2), on separate sheet;</u> | | • | | • |
| 76 | <u>Show generally on the plan and in tabular form how the plan meets the requirements of Section 78-504;</u> | • | | | |
| 77 | <u>Proposed ownership of open space;</u> | | • | • | • |
| 78 | <u>Visual and acoustical screening of mechanical equipment (roof-mounted and ground-mounted);</u> | | • | | • |
| 79 | <u>Location of signs;</u> | • | • | • | • |
| 80 | <u>Lighting depicted on a lighting plan, in conformance with Section 78-515 (I);</u> | | • | | • |
| 80a | <u>Description of all luminaires (location, output and type) and the method of fixture mounting, output (distribution patterns), and mounting height above grade;</u> | | • | | • |

**Table 78-201(C)(8): CONTENT REQUIREMENTS FOR PLANS SUBMITTED WITH APPLICATIONS
FOR A ZONING MAP AMENDMENT, SPECIAL EXCEPTION, SITE PLANS THAT REQUIRE A PUBLIC HEARING,
PRELIMINARY SUBDIVISION PLAN, AND SUBDIVISION SITE PLAN**

| | Key: • Required information | GDP* (if submitted) | Site Plan that requires a public hearing | Preliminary Subdivision Plan | Subdivision Site Plan |
|-----|---|---------------------------|--|------------------------------------|--------------------------|
| 80b | <u>Architectural style;</u> | | • | | • |
| 80c | <u>Levels of illumination diagrammed with maintained horizontal footcandle values at a distance of three feet above the ground, with grid spacing no greater than 15 feet covering the entire site and adjacent areas;</u> | | • | | • |
| 80d | <u>Detail sheet showing poles and fixtures, and whether poles are foundation-mounted or direct burial; as well as detail for fixtures mounted on buildings;</u> | | • | | • |
| 80e | <u>Detail of shielding devices and methods, as well as the distribution patterns for each type of shielding.;</u> | | • | | • |
| 80f | <u>Statements on the plan sheet that:</u> a. <u>Sodium vapor luminaires shall not be used for site lighting;</u> b. <u>All direct light rays from site lighting fixtures shall be confined entirely within the boundary line of the site;</u> | | • | | • |
| 80g | <u>Product cut sheets and individual distribution patterns (may be submitted when information is known);</u> | | • | | • |
| 80h | <u>Streetlights to be provided on public streets, with specifications shown on a photometric plan;</u> | | • | | • |
| 81 | <u>Bulk solid waste receptacles in conformance with Section 78-516;</u> | • | • | | • |
| 82 | <u>Proposed public use dedications;</u> | • | • | • | • |
| 83 | <u>Compliance with applicable established design criteria, construction standards and specifications for improvements required by ordinance or a duly adopted resolution by the Town Council; or recommended by the staff based on accepted planning and engineering practices;</u> | • | • | • | • |
| 84 | <u>Any additional information that the applicant may desire to provide in the consideration of the application;</u> | • | • | • | • |
| 85 | <u>Statement that, to the preparer's knowledge, the plan complies with all applicable zoning requirements, including previously approved proffers, conditions, waivers, variances and modifications;</u> | | • | | • |

Table 78-201(C)(8): CONTENT REQUIREMENTS FOR PLANS SUBMITTED WITH APPLICATIONS FOR A ZONING MAP AMENDMENT, SPECIAL EXCEPTION, SITE PLANS THAT REQUIRE A PUBLIC HEARING, PRELIMINARY SUBDIVISION PLAN, AND SUBDIVISION SITE PLAN

| | Key: • Required information | GDP* (if submitted) | Site Plan that requires a public hearing | Preliminary Subdivision Plan | Subdivision Site Plan |
|---|---|------------------------|--|------------------------------------|--------------------------|
| | | | | | |
| | Documentation of Prior Approvals | | | | |
| 86 | Copy of any ordinance of rezoning of site, including any approved written proffers, waivers, modifications or conditions; | | • | • | • |
| 87 | Copy of any approved Generalized Development plan for site; | | • | • | • |
| 88 | Copy of any variance resolution granted for site; | • | • | • | • |
| 89 | Copy of any resolution approving a special exception or conditional use permit for site; | | • | • | • |
| 90 | Copy of any applicable zoning administrator interpretations for site; | • | • | • | • |
| 91 | Copy of any court order applicable to site development; | • | • | • | • |
| 92 | Copy of approved preliminary subdivision plan for site. | | | | • |
| * "GDP" refers to a generalized development plan, submitted with applications for zoning map amendments and special exceptions. | | | | | |

(9) Other Submittal Requirements

The following items must also accompany an application for a zoning map amendment, special exception, site plan that requires a public hearing, preliminary subdivision plan, or subdivision site plan, as indicated in Table 78-201(C)(9):

Table 78-201(C)(9) Other Submittal Requirements, as Applicable, to Accompany Applications for a Zoning Map Amendment, a Special Exception, a Site Plan that Requires a Public Hearing, a Preliminary Subdivision Plan, and a Subdivision Site Plan

| | Key: • Required information | GDP* (if sub- mitted) | Site Plan that re- quires a public hear- ing | Preliminary Subdivision Plan | Subdivision Site Plan |
|---|--|-----------------------------|---|------------------------------------|--------------------------|
| 1 | A traffic impact study for the proposed uses(s) prepared in accordance with Section 78-501(B), <i>Traffic impact studies</i> . | • | • | • | • |
| 2 | A description of special amenities proposed within the development; | • | | • | |
| 3 | A statement setting forth the proposed approximate | • | | • | |

| | | | | | |
|--|---|----------|----------|----------|----------|
| | <u>development schedule</u> | | | | |
| <u>4</u> | <u>Certification, in a form prescribed by the Zoning Administrator, that all required public notification regarding a public hearing has been given in accordance with Section 78-201(I), Public Notification shall be submitted upon completion of proper notification by the applicant</u> | <u>•</u> | <u>•</u> | <u>•</u> | |
| <u>5</u> | <u>For review and presentation at the Planning Commission and the Town Council meetings: nine copies of the primary plan sheet and landscape plan sheet (as applicable) on 11" x 17" sheets for each meeting, in a form determined by the Zoning Administrator</u> | <u>•</u> | <u>•</u> | <u>•</u> | |
| <u>6</u> | <u>The Zoning Administrator or Subdivision Administrator may request additional information, as reasonable, if necessary for the evaluation of the application.</u> | <u>•</u> | <u>•</u> | <u>•</u> | <u>•</u> |
| <u>7</u> | <u>Prior to submittal of the application materials, the applicant may request that the Zoning Administrator or Subdivision Administrator approve relief from any specific submittal requirements listed in Section 78-201(C) or elsewhere if the Zoning Administrator or Subdivision Administrator deems such requirements unnecessary for the evaluation of the application.</u> | <u>•</u> | <u>•</u> | <u>•</u> | <u>•</u> |
| <u>* "GDP" refers to a generalized development plan, submitted with applications for zoning map amendments and special exceptions.</u> | | | | | |

- ~~(a) — Certification, in a form prescribed by the Zoning Administrator, that all required public notification regarding a public hearing has been given in accordance with Section 78-201(I), Public Notification shall be submitted upon completion of proper notification by the applicant.~~
- ~~(b) — Any additional submittal requirements in the relevant section of Section 78-202, Specific Standards and Other Requirements for Applications for Development Approval.~~
- ~~(c) — The Zoning Administrator may request additional information, as reasonable, if necessary for the evaluation of the application.~~
- ~~(d) — Prior to submittal of the application materials, the applicant may request that the Zoning Administrator approve relief from specific submittal requirements if the Zoning Administrator deems such requirements unnecessary for the evaluation of the application.~~

(D) Pre-Application Conference

The purpose of a pre-application conference is to familiarize the applicant and the Town staff with the applicable provisions of this Chapter for the proposed development, to inform the applicant about the preparation of the application, and the application process. A pre-application conference is mandatory prior to submittal of any application for an amendment to the Official Zoning Map (Section 78-202(A)), Special Exception (Section 78-202(C)), Single Lot Development Plan (Section 78-202(F)(3)(a)1) and Site Plans that Require a Public Hearing (Section 78-202(F)(4)). A pre-application conference is optional prior to submittal of any other application for development approval under this Chapter. The pre-application conference is intended to facilitate the review of development applications. Discussions held pursuant to this Section are not binding on the Town or applicant. Processing times for review of development

applications do not begin until a formal, complete application is submitted and determined to be complete. The procedure for the pre-application conference is:

(a) Request

1. Any applicant subject to a mandatory pre-application conference or any other applicant requesting a pre-application conference shall request it in writing from the Zoning Administrator. Along with the request, the applicant shall provide to the Zoning Administrator a description of the character, location, and magnitude or scale of the proposed development, and any other appropriate supporting information and documents, such as a sketch or concept plan (if appropriate).
2. Upon receipt of the request, the Zoning Administrator may waive this pre-application requirement if it is determined that the nature and magnitude of the project do not make it necessary for the applicant to be familiar with the application provisions of this Chapter, or for the staff to be familiar with the project proposal prior to the application submittal.

(b) Meeting

1. The Zoning Administrator shall schedule promptly a pre-application conference after receipt of the request and the appropriate submittal materials. The Zoning Administrator shall review the materials and forward them to other members of the Town staff, and to any local, regional, state, and federal agency officials the Zoning Administrator determines should participate in the pre-application conference.
2. At the pre-application conference the applicant, the Zoning Administrator, and any other Town staff and local, regional, state, or federal representatives the Zoning Administrator determines appropriate, shall discuss the proposed development, and based upon the information provided by the applicant, identify in general what provisions apply to the proposed development. The Zoning Administrator shall generally inform the applicant regarding necessary application materials and provide estimates of the timing of review.

(E) Neighborhood Meetings

- (1) The purposes of the neighborhood meeting are to (a) educate neighbors about the proposed development and application, (b) receive neighborhood comments, ~~(c) (3)~~ address concerns about the development proposal, and ~~(d) (4)~~ resolve conflicts and outstanding issues, where possible. Neighborhood meetings are opportunities for informal communication between landowners, applicants, and residents who may be affected by development proposals.
- (2) At least one neighborhood meeting is strongly encouraged for a zoning map amendment application prior to filing the application if any part of the property proposed for zoning map amendment is abutting or across the street from existing residences. The applicant shall file a report of the neighborhood meeting with the application for zoning map amendment.
- (3) Neighborhood meetings generally are encouraged prior to, or shortly after, submittal of other applications requiring a public hearing. The Town Council, Planning Commission, Architectural Review Board or Heritage Preservation

Review Board may encourage an applicant to conduct a neighborhood meeting on an application if, in the determination of the review board, the proposed development could affect neighboring properties.

- (4) The Zoning Ordinance User Guide (Section 78-201(B)(4)) may include a preferred procedure for the conduct of a neighborhood meeting.

(F) Application Submittal, Completeness

Original and revised applications shall be submitted to the Zoning Administrator pursuant to the application submittal schedule (Section 78-201(B)(2)) in the form established by the Zoning Administrator (Section 78-201(B)(1)), along with a fee established pursuant to Section 78-201(B)(3). It shall be the responsibility of the applicant to ensure that the application is complete and meets applicable submittal requirements. If, during the review process, the staff discovers that the application does not meet the requirements of sections 78-201(B) (1)-(3) and any additional submittal requirements in the applicable section of Section 78-202, *Specific Standards and Other Requirements for Applications for Development Approval*, the application shall be considered insufficient and shall be returned to the applicant. Time limits for review of the application shall become void.

(G) Review Process for Applications Requiring a Public Hearing

(1) Initial Review

The Zoning Administrator shall refer the application to the appropriate staff and any other review agencies for comment and review of the application. After the review comments have been returned to the Zoning Administrator, the Zoning Administrator shall determine whether or not the application is suitable to be presented for consideration by the relevant reviewing Board, Council or Commission.

(2) Compliance with Regulations, Standards and Policies

If the Zoning Administrator finds that the application does not comply with applicable regulations, standards, or policies of the Comprehensive Plan (where applicable,) the applicant shall be notified of the deficiencies, in writing. The applicant may correct the deficiencies and resubmit the application for compliance review. Alternatively, the applicant may request in writing that the application go forward without change to a public hearing before the applicable Board, Commission or Council. If the applicant fails to resubmit or to request that the application go forward within 60 working days after notification of the deficiencies is mailed or delivered, the application shall be considered withdrawn. Withdrawn applications and associated application fees shall not be returned.

(3) Subsequent Review

If the applicant resubmits the application, the Zoning Administrator shall refer the application to the appropriate staff and any other review agencies for comment. After comments have been returned to the Zoning Administrator, the Zoning Administrator shall determine whether or not the application is suitable to be presented for consideration by the relevant reviewing Board, Council or Commission. If the Zoning Administrator finds that the application does not comply with applicable regulations, standards or policies of the Comprehensive Plan (where applicable), then an additional round of submittal and review shall be recommended to the applicant.

(4) Referral to Reviewing Board, Council or Commission for Public Hearing

If the Zoning Administrator finds that the application is suitable to be presented for consideration by the relevant reviewing body, or upon receipt of a request

from the applicant to take the application forward without further revision, the Zoning Administrator shall refer the application to the appropriate reviewing body, schedule a public hearing, and notify the applicant of the hearing date. The public hearing(s) on the application shall be scheduled so there is sufficient time for preparation of the staff report and public notification.

(5) Staff Report

The staff shall prepare a report and make it available to the applicant and the public a minimum of five days before the first scheduled work session for applications to the Architectural Review Board, Heritage Preservation Review Board, Planning Commission and Town Council. For the Board of Zoning Appeals, the staff shall prepare a report and make it available to the applicant and the public a minimum of five days before the first scheduled public hearing. The Staff Report shall be addressed to the reviewing body or bodies and shall state whether or not the application complies with appropriate standards of this Chapter. The Staff Report shall include a recommendation that the reviewing body approve, approve with changes, approve with conditions (if approval with conditions is applicable to the particular application), or disapprove the application. If approval with conditions is applicable, the Staff Report may recommend that conditions for approval be applied to mitigate adverse effects of the development proposal. The Staff Report may also recommend changes to the application that will result in compliance with the relevant review standards and policies of the Comprehensive Plan (where applicable).

(6) Public Hearings

- (a)** The Town shall conduct at least two public hearings (one hearing at the Planning Commission level and one hearing at the Town Council level) for applications for text amendments, amendments to the Official Zoning Map, Planned Development (PD) zoning district classifications, Special Exceptions, and Site Plans requiring a public hearing. When unusual circumstances warrant, the public hearing of the Planning Commission and the public hearing of the Town Council may be combined into a joint public hearing, at the direction of the Town Council.
- (b)** The Heritage Preservation Review Board shall conduct at least one public hearing for applications for Certificates of Appropriateness.
- (c)** The Board of Zoning Appeals shall conduct at least one public hearing for applications for variances, and appeals from determinations by of the Zoning Administrator.
- (d)** The Architectural Review Board shall hold public hearings as provided in Chapter 58 of the Herndon Town Code.

(H) Time in Which to Act

The reviewing approving authority shall have 90 days in which to approve or disapprove an application for a preliminary subdivision plan, final subdivision plan, subdivision plat or site plan following acceptance of the application. Any change or revision to an application submitted by the applicant in writing, or orally at a public hearing before the Planning Commission or Town Council, shall constitute a new application with respect to the time in which to act. The Town Council shall have one year from the acceptance of the initial application to make a final decision on a zoning map amendment or special exception application. For any of the above time limits, the applicant may agree to additional time.

~~Scheduling Public Hearing(s)~~

~~(1) Application To Be Scheduled for Meeting~~

When an application is subject to a public hearing (see Section 78-201(I)(5), *Required Notice and Timing*) the Zoning Administrator shall ensure that the public hearing(s) on the application is properly scheduled.

(2) Timing

The public hearing(s) on the application shall be scheduled so there is sufficient time for a Staff Report to be prepared and for the public notification requirements to be satisfied.

(3) Public Hearings

- (a)** The Town shall conduct at least two public hearings (one hearing at the Planning Commission level and one hearing at the Town Council level) for applications for text amendments, amendments to the Official Zoning Map, Planned Development (PD) zoning district classifications, Special Exceptions, and Site Plans requiring a public hearing. When unusual circumstances warrant, the public hearing of the Planning Commission and the public hearing of the Town Council may be combined into a joint public hearing, at the direction of the Town Council.
- (b)** The Heritage Preservation Review Board shall conduct at least one public hearing for applications for Certificates of Appropriateness.
- (c)** The Board of Zoning Appeals shall conduct at least one public hearing for applications for variances, and appeals from determinations by of the Zoning Administrator.
- (d)** The Architectural Review Board shall hold public hearings as provided in Chapter 58 of the Herndon Town Code.

(I) Public Notification

All applications requiring public hearing(s) shall comply with the Code of Virginia and the other provisions of this Section with regard to public notification.

(1) Content

All notices for public hearings, unless expressly noted otherwise by this Chapter, whether done by mail (written notice), publication (publishing in a newspaper of general circulation in the Town), or posting shall:

- (a)** Identify the application or application number, and the name of the applicant or the applicant's agent (except posted notice).
- (b)** Indicate the date, time and place of the public hearing(s).
- (c)** Describe the land involved by its complete street address and by county tax map reference number, nearest cross street, and land area (except posted notice).
- (d)** Identify the current zoning district designation of the land subject to the application.
- (e)** Provide a descriptive summary of the nature, scope, and purpose of the application or proposal. For an amendment to the Official Zoning Map, describe the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the comprehensive plan.
- (f)** Describe in which department the public may inspect the application, the Staff Report, and related materials, and state that these materials are available for public inspection during normal business hours.
- (g)** Include a statement describing where interested members of the public and adjoining property owners may submit written comments or evidence prior to the public hearing(s).
- (h)** Include a statement that interested members of the public and adjoining property owners may appear at the public hearing, be heard, and submit evidence and written comments with respect to the application.

1
2 **(2) Written (Mailed) Notice**

3 When the provisions of this Chapter (see Section 78-201(I)(5)) require that
4 written or mailed notice be provided, the preparation and transmittal of the
5 written notice shall comply with this Section, unless expressly stated otherwise.

6 **(a)** Notice shall be mailed at least 15 days prior to the associated public
7 hearing.

8 **(b)** Notice shall be mailed to:

- 9 1. The owner of the property that is the subject of the application
10 (if different from the applicant) including:
11 a. If any portion of the property in the case is within a
12 planned development, to the homeowner's association.
13 b. In the case of a condominium, written notice may be
14 mailed to the unit owner's association in lieu of each
15 individual unit owner.
16 2. The owners of abutting property, which shall mean property
17 (whether inside or outside the Town) that touches the property
18 that is the subject of the application and any property directly
19 across the street or road and, in the case of a corner lot,
20 diagonally faces the property that is the subject of the
21 application, including:
22 a. If any portion of the abutting property is within a
23 planned development, to the homeowner's association.
24 b. In the case of a condominium, written notice may be
25 mailed to the unit owner's association in lieu of each
26 individual unit owner.
27 3. Owner, owners, or their agent of each parcel of land involved in
28 cases where a zoning map amendment or text amendment to
29 this Chapter (in accordance with the Code of Virginia, Section
30 15.2-2204):
31 a. Involves a change in the zoning map classification of 25
32 of fewer parcels of land, or
33 b. Involves a change in the zoning map classification of
34 more than 25 parcels of land, except such written notice
35 shall not be required if the subject lots are less than
36 11,500 square feet in size.
37 c. Would decrease the allowed dwelling unit density of any
38 parcel of land, except such written notice shall not be
39 required if the subject lots are less than 11,500 square
40 feet in size.
41 4. The chief administrative officer of adjacent jurisdictions within
42 one half mile of property subject to (a) a proposed change in
43 zoning map classification; or (b) an application for special
44 exception to increase the height or bulk of an existing structure
45 by more than 50 percent.
46 5. The applicant shall be responsible for providing written notice
47 when the public hearing is before the Planning Commission or
48 Town Council. In identifying the persons to whom written notice
49 is required to be provided pursuant to Section 78-201(I)(5), the
50 applicant shall use the records and maps maintained by the
51 Fairfax County Department of Tax Administration, and reliance
52 upon these records shall constitute sufficient compliance with
53 the requirements of this Section. The applicant shall certify, in a
54 form prescribed by the Zoning Administrator, that notice

meeting the requirements of Section 78-201(I)(5), has been given pursuant to the requirements of this Section.

- a. In cases where 25 or fewer parcels of land are subject to an application to amend the Official Zoning Map, certification shall be made by furnishing the certified or registered mail receipts for persons to whom notice has been sent, along with an affidavit with affirmation that notice meeting the content requirements of Section 78-201(I)(5) was mailed pursuant to this Section and a list of the persons, property identification numbers, and addresses, to which notice was sent, to the Zoning Administrator at least 5 days prior to the first hearing.
- b. In cases where more than 25 parcels of land are subject to an application to amend the Official Zoning Map, certification shall be made by furnishing an affidavit affirming that notice meeting the content requirements of Section 78-201(I)(5) was mailed via first class mail pursuant to this Section and a list of the persons, property identification numbers, and addresses, to which notice was sent, to the Zoning Administrator at least 5 days prior to the first hearing.
6. The Zoning Administrator shall be responsible for providing written notice when the public hearing is before the Board of Zoning Appeals, the Heritage Preservation Review Board, or the Architectural Review Board. The Zoning Administrator shall prepare a list of property owners and registrants to whom notice was mailed via first class mail and an affidavit affirming that notice meeting the content requirements of Section 78-201(I)(5) was mailed pursuant to this Section. The affidavit shall be conclusive that notice has been given pursuant to the terms of this section. A copy of the mailed notice shall be maintained in the office of the Zoning Administrator for public inspection during normal business hours.
7. Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid, except for an amendment to the zoning map for an application involving 25 or fewer parcels of land, for which notice shall be made by certified or registered mail.

- (c) Any person entitled to notice may waive such right by submitting a written waiver of notification filed with the Zoning Administrator prior to the public hearing(s).

(3) Published Notice

When the provisions of this Chapter (see Section 78-201(I)(5)) require that notice be published, the preparation and form of the notice shall be in accordance with this Section, unless expressly noted otherwise. The Zoning Administrator shall be responsible for preparing the content of the notice and publishing the notice in a newspaper of general circulation in the Town. The content and form of the published notice shall be consistent with the requirements of the Section 15.2-2204 of the Code of Virginia.

(4) Posted (Placard) Notice

When the provisions of Section 78-201(I)(5) require that notice be posted on the land subject to the application, notice shall comply with the following requirements:

- (a) Notice shall be posted on sign(s) in a form established by the Zoning Administrator.
- (b) The signs shall be placed by the Zoning Administrator on the property that is subject to the application, along each street frontage that abuts or runs through the property, at intervals of not more than 100 linear feet.
- (c) The Zoning Administrator shall prepare an affidavit certifying that posted notice has been provided pursuant to the requirements of this section. The affidavit shall be conclusive that notice has been given in accordance with the terms of this section.
- (d) It shall be unlawful for any person to destroy, deface, or remove posted notice. Any person taking such action shall be subject to the penalties set forth in Section 78-203, Enforcement and Remedies.

(5) Required Notice and Timing

Notice shall be provided as required in the Code of Virginia, Section 15.2-2204, Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments (most recent version included as an appendix to this Chapter.) Such notice shall not be required for sign permit applications before the architectural review board or heritage preservation review board.

(6) Registration to Receive Notice

~~Beginning in July, 2006, any~~ Any individual, business, or organization in the Town may register with the Zoning Administrator to receive either written notice of applications pursuant to Section 78-201(I)(5) or notice by e-mail at approximately the same time that written notice as described in Section 78-201(I)(5) is placed in the United States Mail. To be eligible for registration, the applicant shall provide the Zoning Administrator information in the form required by the Zoning Administrator to ensure notification can be made to the requester organization, along with a fee to cover the costs of the written notification as shown in Section 78-201(B)(3). To continue to receive notice, an organization shall re-register every 2 years.

(J) Deferral of Application

(1) Submittal of Application Request for Deferral

Any request for deferral of an application shall be either submitted in writing to the Zoning Administrator, or made through an oral request during a public hearing.

(2) Prior to Notice of Public Hearing

The Zoning Administrator shall approve a request for deferral of an application if it has been submitted prior to notification of a public hearing on the application pursuant to Section 78-201(I), *Public Notification*.

(3) Subsequent to Notice of Public Hearing

If the request for deferral of an application is submitted subsequent to notification of a public hearing pursuant to Section 78-201(I), *Public Notification*, the request for deferral shall be placed on the public hearing agenda and acted upon by the advisory or decision-making body.

(4) Request for Deferral at a Public Hearing

If the request for deferral of an application is made either orally or in writing subsequent to the beginning of the scheduled public hearing, the request for deferral may be considered and acted upon by the advisory or decision-making body.

(5) New Date for Public Hearing

The date of the public hearing at which the application will be heard shall be set at the time the deferral is granted. The date of the public hearing shall be appropriate to allow

compliance with Section 78-201(I), *Public Notification*. Except as noted in Section 78-201(M), *Public Hearing Procedures*, any time limits set forth in the Code of Virginia for the review of the application shall begin anew on the date of the public hearing at which the application will be heard.

(K) Withdrawal of Application

(1) Submittal of Application

Any request for withdrawal of an application shall be either submitted in writing to the Zoning Administrator, or made through a verbal request during a public hearing.

(2) Prior to Notice of Public Hearing

The Zoning Administrator shall approve a request for withdrawal of an application if it has been submitted prior to notification of a public hearing on the application pursuant to Section 78-201(I), *Public Notification*.

(3) Subsequent to Notice of Public Hearing

If the request for withdrawal of an application is submitted subsequent to notification of a public hearing pursuant to Section 78-201(I), *Public Notification*, the request for withdrawal shall be placed on the public hearing agenda and acted upon by the advisory or decision-making body.

(L) Conditions of Approval

(1) Where a review board or Town official may, according to the express terms of the Code of Virginia and this Chapter, approve a permit or development with conditions (such as Special Exceptions and Variances), the board or official may impose restrictions or conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as are required to prevent or minimize adverse effects from the proposed development on surrounding lands.

(2) The restrictions and conditions imposed must be related in both type and amount to the impact that the proposed development would have on the public and surrounding development. Conditions imposed shall be expressly set forth in the permit approval.

(M) Public Hearing Procedures

All public hearings for applications held pursuant to this Chapter shall comply with the following procedures.

(1) General Procedures and Findings at Public Hearing

The body conducting the hearing shall act in accord with any time limits established in this Chapter. Action shall be taken as promptly as possible in consideration of the interests of the applicant, and the citizens of the Town, and shall include a statement of a recommendation or decision of approval, approval with conditions, or disapproval (whichever is appropriate).

(2) Continuation of Public Hearing

(a) The body conducting the public hearing may, on its own motion or at the request of any person, continue the public hearing to a fixed date, time, and place. An applicant shall have the right to request and be granted 1 continuation. However, subsequent continuations shall be granted at the discretion of the body conducting the public hearing.

(b) A request received by the Zoning Administrator for delay of a public hearing following public notification of the public hearing shall be considered as a request for a continuation, and may be granted by the advisory or decision-making body.

(c) The new date of the continued public hearing shall be set at the time the continuation is granted.

- (d) If the applicant requests or concurs in the continuation, any time limits set forth in the Code of Virginia for acting on an application shall be reinstated on the date of the work session (if applicable) associated with the continued public hearing.
1. if no revised submittal is offered by the applicant, the time limits for review shall begin on the date of the work session (if applicable) associated with the continued public hearing;
 2. If the applicant opts to submit a revised application, the time limits for review shall begin upon submittal of the revision in accordance with Section 78-201 (F) *Application Submittal, Completeness.*
- (e) Any time limits set forth in the Code of Virginia for acting on an application shall not be reinstated if the applicant concurs in the continuation for the specific purpose of addressing comments by the reviewing Board, Council or Commission.
- (f) A public hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements of this Section, provided that the continuation is set for a date within 45 days of the advertised public hearing, and the date and time of the continued hearing is announced at the time of the continuation.
- (g) Additional notice is required:
1. If the advisory or decision-making body considering an application for which notice is provided pursuant to this Section has not made a decision on the application within 45 days of the public hearing for which the application is noticed, public notification shall be repeated consistent with the procedures and standards for its original notification before the review body considers and makes a decision on the application.
 2. If the Town Council refers any matter to the Planning Commission, public notification shall be repeated in accordance with Section 78-201(I) *Public Notification.*

(N) Notification of Decision

Following a decision on an application, the decision-making officials, advisory or decision-making body, or the staff from that body shall notify the applicant of the decision in writing by mail.

(O) Lapse of Approval

Lapse of approval shall occur as provided by this Chapter for the various types of development permits and approvals. ~~If no provision for lapse is given by this Chapter for a particular type of development permit or approval, and if no lapse period is imposed as part of an approval by the reviewing entity in the permit or development approval, lapse shall occur if development is not commenced or a subsequent permit is not obtained within 5 years.~~

(P) Time Limit for Reapplication for Zoning Map Amendments and Special Exceptions

(1) General

Whenever any application for a zoning map amendment or special exception is disapproved, another application which is substantially the same for all or a part of the same land shall not be considered for a period of 1 year after the date of disapproval unless a Waiver of Time Limit is approved by the Town Council, pursuant to the requirements of this Section.

(2) Procedure for Obtaining a Waiver of Time Limit

- 1 (a) The owner or the owner's authorized agent may initiate a request by
2 submitting a request for Waiver of Time Limit to the Zoning
3 Administrator, along with a fee pursuant to Section 78-201(B)(3), Fees.
4 (b) After receipt of a request for Waiver of Time Limit, the Zoning
5 Administrator shall prepare a Staff Report on the request (which
6 includes copies of the minutes and vote on the previous application) and
7 schedule the matter for the next regularly scheduled meeting of the
8 Town Council.
9 (c) At the meeting for which the request for Waiver of Time Limit is
10 scheduled, the Town Council shall consider the request, the Staff
11 Report (including the minutes and vote on the previous application),
12 other relevant support materials, statements made by the applicant or
13 the applicant's representative and the public.
14 (d) The Waiver of Time Limit may be approved upon a finding by two-thirds
15 of the membership of the Town Council that, based on information
16 submitted by the applicant:
17 1. There is a substantial change in circumstances relevant to
18 the issues or facts considered during review of the
19 application that might reasonably affect the Town
20 Council's application of the relevant review standards to
21 the development proposed in the application; or
22 2. New or additional information is available that was not
23 available at the time of the review that might reasonably
24 affect the Town Council's application of the relevant
25 review standards to the development proposed; or
26 3. A new application is proposed to be submitted that is
27 materially different from the prior application; or
28 4. The final decision on the application was based on a
29 material mistake of fact.
30

31 **(Q) Examination and Copying of Application/Other Documents**

32 In accordance with the provisions of Section 2.2-3700 of the Code of Virginia, at any time upon
33 reasonable request and during normal business hours, any person may examine an application,
34 a Staff Report, and materials submitted in support of or in opposition to an application in the
35 office of the Zoning Administrator. Copies of such materials shall be made available at a
36 reasonable cost.
37

38 **(R) Simultaneous Processing of Applications**

39 Whenever 2 or more forms of review and approval are required under this Chapter, the
40 applications for those permits or development approvals may, at the option of the Zoning
41 Administrator, be processed simultaneously, so long as applicable state and local requirements
42 are satisfied. Each application is subject to review and decision on its own merits, and the
43 simultaneous processing of the applications does not constitute any representation that the
44 individual applications will be approved or reviewed more favorably than if they had occurred
45 separately. Simultaneous processing may result in additional costs for the applicant; for
46 example, substantive changes in one application may necessitate the re-drawing of plans in a
47 related application.
48

49 **(S) ~~Zoning Administrator Review Procedures~~ Process for Applications Not Requiring
50 a Public Hearing**

51 Review and decision of applications for development approval conducted by the Zoning
52 Administrator shall comply with the following procedures.

53 **(1) General Review**

54 After the application is deemed complete (Section 78-201(G)), the Zoning Administrator
55 shall review the application and determine whether or not the application complies with

the applicable review standards. The Zoning Administrator may refer any application to other members of the Town staff for recommendations.

(2) Approval

If the Zoning Administrator determines the application complies with the applicable review standards, the application shall be approved or approved with conditions (if appropriate), and a notice of decision provided to the applicant.

(3) Submittal of Revised Application

- (a)** If the Zoning Administrator determines the application fails to comply with the applicable review standards, the Zoning Administrator shall identify why the application fails to comply, and provide this information to the applicant. The applicant shall have an opportunity to re-submit a revised application. At the applicant's request, the Zoning Administrator will schedule a meeting with the applicant to discuss the application. The application shall be considered withdrawn if a revised application is not resubmitted within 60 days from the date the applicant is notified the application fails to comply with relevant review standards.
- (b)** A revised application shall be reviewed by the Zoning Administrator after its re-submittal and approved, approved with conditions, or disapproved, based on the applicable review standards.
- (c)** Any time limits for action shall begin anew upon the acceptance of the revised application.

(T) Diligent Pursuit of Application

Applications shall be diligently pursued by the applicant. If a period of 90 days elapses following the Town's written request for additional information or invitation to proceed to the next stage of review without a substantive response from the applicant, the zoning administrator may terminate the application. Termination shall occur by letter to the applicant.

78-202 Specific Standards and Other Requirements for Applications for Development Approval**(A) Zoning Map Amendment (ZMA)****(1) Purpose and Intent**

The purpose and intent of this Section is to provide a means for making an amendment to the Official Zoning Map.

(2) Authority

The Town Council may adopt an ordinance amending the Official Zoning Map upon compliance with the provisions of this Section.

(3) Initiation

An application to amend the Official Zoning Map may be initiated by the Town Council by resolution, the Planning Commission by motion, or a person or entity who may submit applications pursuant to Section 78-201(A), *Authority to File Applications*. If the Town Council or Planning Commission initiates an amendment, the resolution or motion (whichever is appropriate) shall state the statutory public purpose for the proposed amendment found in Section 15.2-2286(A)(7) of the Code of Virginia (as amended).

No application for a change of zoning on the same parcel of land shall be considered by the Town Council within a period of time of one year from its last consideration by the Town Council. This section, however, shall not impair the right of the Town Council to propose a change of zoning on its own motion.

(4) Submittal Requirements

All applications for amendments to the Official Zoning Map shall include the items required in Section 78-201(C), ~~Common~~ Submittal Requirements, as well as the following:

- (a)** One copy of an affidavit by the applicant stating whether or not any member of the planning commission or the town council or any member of the immediate household of any member of the planning commission or town council has any interest on the subject property, either individually, by ownership of stock in a corporation or partnership;
- (b)** All statements, plans, profiles, elevations, and other demonstrative materials submitted with an application for an amendment to the Official Zoning Map shall include a statement indicating whether or not such items are proffered as conditions of the application. Items that are proffered that utilize the following statement: "The undersigned proffers that the development of the property that is the subject of this application shall be in substantial conformity with the conditions set forth in this submittal."
- (c)** All zoning map amendments shall include ten (10) copies of a Generalized Development Plan for the land subject to the amendment and showing information as indicated in Section 78-201(C)(8) Contents of Plans the following written or visual information:

~~4. A general plan of the proposed development, at an appropriate scale, showing:~~

- ~~a. the proposed traffic circulation plan including major streets and major pedestrian, and bike paths; the approximate location of proposed community and public facilities and the proposed plan for major sanitary sewer and storm drainage improvements; and a schedule~~

- 1 showing the number of parking spaces provided and
2 the number required by the provisions of Section 78-
3 500, *Off-street Parking and Loading*;
- 4 ~~b. The features of the proposed development, including~~
5 ~~land uses, the general location of buildings proposed,~~
6 ~~the number of residential units and types, the type,~~
7 ~~amount (in square foot), and Floor Area Ratio of~~
8 ~~nonresidential development, and other information~~
9 ~~about densities, and intensities;~~
- 10 ~~c. The planned height of structures;~~
- 11 ~~d. Location of open space and recreation facilities and~~
12 ~~associated calculations;~~
- 13 ~~e. Off-street parking;~~
- 14 ~~f. Landscaping, buffering and screening in accordance~~
15 ~~with Section 78-503, *Site Landscaping*;~~
- 16 ~~g. A description of special amenities proposed within the~~
17 ~~development;~~
- 18 ~~h. Topography with a minimum contour interval of two~~
19 ~~feet;~~
- 20 ~~i. Location of signs.~~
- 21
- 22 ~~2. A delineation of those general areas that have scenic~~
23 ~~assets or natural features deserving of protection and~~
24 ~~preservation, and a statement of how such will be~~
25 ~~accomplished;~~
- 26 ~~3. A tree survey prepared by an ISA-Certified Arborist. The~~
27 ~~tree survey shall show~~
- 28 ~~a. The existing tree canopy cover;~~
- 29 ~~b. Existing trees having a caliper of eight inches or greater~~
30 ~~when measured four feet, six inches above the ground,~~
31 ~~or a tree stand delineation as approved for group~~
32 ~~identification by the community forester;~~
- 33 ~~c. Ornamental trees including, but not limited to: Dogwood~~
34 ~~(Cornus), American Holly (Ilex opaca), Shadblow~~
35 ~~(Amelanchier species), Eastern Redbud (Cercis~~
36 ~~canadensis) and Fringe Tree (Chionanthus virginicus)~~
37 ~~having a caliper of two to four inches measured at six~~
38 ~~inches above the ground or a caliper greater than four~~
39 ~~inches measured at 12 inches above the ground shall~~
40 ~~also be included in the inventory;~~
- 41 ~~d. Groups of trees and individual trees standing alone that~~
42 ~~will be retained on the site shall be accurately identified~~
43 ~~and located on the survey;~~
- 44 ~~e. Designated "tree protection areas" shall be accurately~~
45 ~~identified and located on the survey;~~
- 46 ~~f. All trees located off-site which have drip lines extending~~
47 ~~into the site shall be shown on the site plan and~~
48 ~~considered as within the site for purposes of protective~~
49 ~~field practices;~~
- 50 ~~4. A statement explaining the relationship of the~~
51 ~~development to the adopted comprehensive plan of the~~
52 ~~Town;~~
- 53 ~~5. A statement or visual presentation of how adjacent and~~
54 ~~neighboring properties shall be protected from any~~
55 ~~adverse effects prompted by the proposed development;~~

~~to include vehicular access plans, proposed measures of screening and dimensions of peripheral yards that will be provided;~~

~~6. A statement certifying that the proposed development conforms to the provisions of applicable ordinances, regulations and adopted standards. Any waiver, or variance sought by the applicant from such ordinances, regulations and standards shall be specifically noted on the plan;~~

~~7. Environmental protection and mitigation;~~

~~8. Signs;~~

~~9. A statement of the public improvements, both on-site and off-site, that are proposed for dedication or construction, and an estimate of the timing of providing such improvements;~~

~~10. A storm water narrative, setting forth the manner in which storm water is to be handled by the proposed development, including a statement concerning adequacy of downstream facilities to carry anticipated storm water flows;~~

~~11. A statement setting forth the proposed approximate development schedule; and~~

~~12. Architectural plans and materials, if proffered.~~

~~13. Any additional information that the applicant may desire to provide in the consideration of the application.~~

(d) In certain circumstances in Planned Development Districts, "modifications" as described in Section 78-303(A)(7)(d) may be sought by an applicant for a zoning map amendment. For such a request to be properly considered, the application submittal shall include a statement of modifications sought, the specific Code citations of the sections from which modifications are sought, and the justification for the modification.

(5) Conditional Proffered Applications to Amend the Official Zoning Map

(a) Applications to amend the Official Zoning Map may be either "general" applications, or may be "conditional" applications subject to voluntary proffers proposed by the applicant requesting the amendment. No review or decision-making body shall apply conditions of approval on a general application to amend the Official Zoning Map. Applications subject to proffers shall comply with the requirements in this section. An Application for a Planned Development (PD) District shall be a "conditional application."

(b) Proffered conditions, if offered by the applicant as part of an amendment to the Official Zoning Map, shall be subject to the following requirements:

1. A statement of proposed proffers shall be submitted with the application to amend the Official Zoning Map.
2. The Town Council may accept proffered conditions provided such conditions comply with Section 15.2-2303 of the Code of Virginia (as amended), and the following criteria:

- a. The proposal to amend the Official Zoning Map necessitates the proposed conditions, and the proposed conditions are reasonably related to the amendment request.

- b. The proposed conditions are in addition to and are no less stringent than the standards of the proposed zoning district or existing overlay district.
- c. The proposed conditions are consistent with the Comprehensive Plan and any other applicable long-range planning document.
3. Proffer Revisions by the Applicant
 - ~~a.~~ Before Town Council ~~Approval:~~ approval, proffer statements included with an application may be revised, deleted, or amended with additional proffers during the review process, with these requirements:
 - i. All voluntary proffered conditions or substantially amended proffers shall be submitted in writing to the Zoning Administrator by 5:00 PM on the Wednesday preceding the public hearing before the Town Council.
 - ii. The submittal of proffers or substantially amended proffers after that deadline shall require, at the Town Council's discretion, either the referral of the application to the Planning Commission for further review, or the postponement of Town Council action on the application until Council's next public hearing on the application. The public hearing on the application shall either be continued or rescheduled.
 - iii. For the purpose of this chapter, a substantially amended proffer includes one that expands the scope of the application or increases the density, height, traffic, or other feature that affects the operation of the development or its impact on the community. The Town Council shall resolve whether or not a proffer amendment is substantial.
 - iv. If the general nature of the substantially amended proffer was not the subject of earlier consideration at the Planning Commission's public hearing, as evidenced by information in the staff report, testimony of the applicant or public or statements by Planning Commission members, then the Town Council shall refer the application to the Planning Commission for review and recommendation following another public hearing, prior to rescheduling its public hearing.
 - v. Any amendment to proffered conditions submitted by the applicant shall cause the time limit for action by the Planning Commission or Town Council to begin anew on the date on which the amendment is submitted.
4. After Approval of Zoning Map Amendments with Proffered Conditions
 - a. Following approval of an ordinance for a zoning map amendment with proffered conditions, the Zoning Administrator shall amend the Official Zoning Map to

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show the new zoning district classification with an annotation on the Official Zoning Map to reflect that additional conditions apply to the subject land; and the property and conditions proffered shall be indexed and recorded in the office of the Zoning Administrator as required by law.

- b. When a zoning map amendment is approved subject to the conditions proffered by the applicant, such conditions shall become a part of the zoning regulations applicable to the property in question unless subsequently changed by an amendment to the official zoning map. Such conditions shall be in addition to the specific regulations set forth in this chapter for the zoning district in question.
- c. Any site plan, subdivision plat or development plan submitted for the development of the property in question shall be in substantial conformity with proffered statements, plans, profiles, elevations or other demonstrative materials.
- d. For the purpose of this section, substantial conformity shall mean that conformity which leaves a reasonable margin for adjustment due to final engineering and site condition data and conforms to the general nature of the development, the specific uses, and the general layout depicted by the proffered plans, profiles, elevations and other demonstrative materials.
- e. Once conditions have been approved, and there is cause for an amendment to the conditions due to proposed development that is not in substantial conformity with the conditions, then an application shall be filed for a zoning map amendment.
- f. In order to ensure compliance with the requirements proffered by the applicant and owner under this section, the zoning administrator shall be vested with necessary authority on behalf of the Town Council to administer and enforce conditions attached to the zoning map amendment, including:
 - i. The ordering in writing of the remedy of noncompliance with such conditions.
 - ii. The bringing of legal action to ensure compliance with such conditions including injunction, abatement or other appropriate action or proceeding.
 - iii. The requirement of a guarantee satisfactory to the town council of a performance bond in the amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions or a contract for the construction of such improvements and the contractor's bond in like amount and so conditioned, which guarantee shall be reduced or released by the town council or zoning administrator upon submittal of satisfactory evidence that construction of such improvements has been completed. Failure to

meet all conditions shall constitute cause to deny issuance of any of the required use, occupancy or zoning permits as may be appropriate.

(6) Expiration for Planned Development Zoning Map Amendments

- (a)** The approval of the adopting ordinance for a PD zoning district classification and the Generalized Development Plan shall be null and void unless a site plan is submitted for at least the initial phase of the Generalized Development Plan within 2 years after the date of approval of the PD zoning district classification. Such period shall not be extended with transfer of ownership. The date of expiration will be 2 years after the date of approval of the PD zoning district classification.
- (b)** Upon written request, the Town Council may grant 1 extension of time to submit a site plan for a period not to exceed 1 year for good cause shown. No request for an extension shall be considered unless a written request is submitted to the Zoning Administrator no later than 30 days prior to the date the adopting ordinance and Generalized Development Plan is to expire. The approval shall be deemed extended until the Town Council has acted upon the request for extension. Failure to submit an application for an extension within the time limits established by this Section shall render the adopting ordinance for a PD zoning district classification void.

(7) Procedures for Zoning Map Amendments

- (a)** If an application for a zoning map amendment includes a proffer or proffers dealing with a building's exterior appearance or materials, the application and proffers shall be reviewed by the Architectural Review Board, or Heritage Preservation Review Board if in a Heritage Preservation Overlay District. This review shall be informal and shall take place at a regularly scheduled work session of the appropriate Board prior to the Planning commission's public hearing on the application. The Chairman of the Board shall submit a written report to the Planning Commission containing the Board's preliminary comments and recommendations on the application and the applicable proffers.
- (b)** The procedures and requirements for submittal and review of an application, public notification and scheduling the public hearings are established in Section 78-201, *Review Procedures*.
- (c)** After public notification and the scheduling of a public hearing, the Planning Commission shall conduct a public hearing on the application. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the staff report, and the public testimony and evidence given at the hearing. After the close of the public hearing, the Planning Commission shall recommend to the Town Council either to approve or disapprove the application based on the standards in Section 78-202(A)(8), *Standards for Official Zoning Map Amendments*, or, if the applicant proposes to proffer certain conditions as an amendment the Official Zoning Map, either approve, or disapprove the application based on the standards in Section 78-202(A)(8), *Standards for Official Zoning Map Amendments*. The report of the Planning Commission's recommendations shall be forwarded to the Town Council.
- (d)** After receipt of the recommendation from the Planning Commission, public notification, and scheduling a public hearing, the Town Council shall conduct a public hearing on the application. At the public hearing,

the Town Council shall consider the application, the relevant support materials, the Staff Report, the direct recommendation of the Planning Commission, and the public testimony and evidence given at the hearing. After the close of the public hearing, and based on Section 78-202 (A) (8), *Standards for Official Zoning Map Amendments*, the Town Council, by a majority vote of those present and voting, may adopt an ordinance amending the Official Zoning Map, continue the public hearing pursuant to Section 78-201(H), *Time in Which to Act*

- (e) ~~The reviewing approving authority shall have 90 days in which to approve or disapprove an application for a preliminary subdivision plan, final subdivision plan, subdivision plat or site plan following acceptance of the application. Any change or revision to an application submitted by the applicant in writing, or orally at a public hearing before the Planning Commission or Town Council, shall constitute a new application with respect to the time in which to act. The Town Council shall have one year from the acceptance of the initial application to make a final decision on a zoning map amendment or special exception application. For any of the above time limits, the applicant may agree to additional time.~~

- (f) ~~Scheduling Public Hearing(s)~~, refer the application back to the Planning Commission pursuant to Section 78-201(J), *Deferral of Applications*, or disapprove the application.

(8) Standards for Official Zoning Map Amendments

The advisability of amending the Official Zoning Map is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In considering an amendment to the Official Zoning Map, the Town Council may adopt a change for a part of the area requested or for a less intense zoning district than requested by the applicant. In determining whether to adopt or disapprove the proposed amendment, or, where appropriate, to accept proffered conditions, the Planning Commission and the Town Council shall determine whether and to what extent the proposed amendment satisfies the following standards:

- (a) consistent with the Comprehensive Plan.
- (b) there are changed conditions that justify an amendment.
- (c) addresses a demonstrated community need.
- (d) compatible with existing and proposed uses surrounding the subject land, and is the appropriate zoning district for the land.
- (e) results in a logical and orderly development pattern, or deviate from logical and orderly development patterns. Accepted or emerging planning practices may be considered.
- (f) avoids the creation of an isolated zoning district unrelated to adjacent and surrounding zoning districts.
- (g) avoids adverse impact on the property values of surrounding lands.
- (h) avoids adverse impact on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
- (i) results in development that is adequately served by transportation facilities, including whether or not a substantial deterioration of the level of service on the Town's transportation network would occur.
- (j) results in development that is adequately served by other public facilities (potable water and sewage, schools, parks, police, and fire and emergency medical facilities).

- (k) if infill and redevelopment, ~~is~~ is consistent with the Evaluation Guidelines in the Redevelopment and Infill Guidelines, Chapter 2: Land Use Plan, of the Town's Comprehensive Plan.

(B) Zoning Ordinance Text Amendment (ZOTA)

(1) Purpose and Intent

The purpose and intent of this Section is to provide a means for amending the text of this Chapter.

(2) Authority

The Town Council may adopt an ordinance amending the text of this Chapter upon compliance with the provisions of this Section.

(3) Initiation

An application to amend the text of this Chapter may be initiated by the Town Council by resolution on its own initiative or following receipt of a petition from the Planning Commission or other board, or citizen.

~~(a) On its own initiative;~~

~~(b) Following receipt of a petition from another decision-making body or citizen; or~~

~~(c) by the Planning Commission by motion.~~

The Town Council shall state the public purpose for the proposed amendment and refer it to the Planning Commission for public hearing and a recommendation.

(4) Procedures

~~The procedures and requirements for submittal and review of an application, public notification and scheduling the public hearings are established in Sections 78-201(A-L) of Section 78-201, Review Procedures.~~

~~(a) In addition, The applicant shall submit:~~

1. A specific proposal for amending the text of the zoning ordinance.
2. Conflict of Interest Affidavit: the applicant shall submit a conflict of interest affidavit. The affidavit shall be signed by the applicant and state whether or not any member of the planning commission or the town council or any member of the immediate household of any member of the planning commission or town council has any interest in the property directly affected by the proposed amendment, either individually, by ownership of stock in a corporation or partnership.
3. Statement of Justification: The applicant shall submit a statement supporting the requested amendment to the Zoning Ordinance Text.

~~(b) If the Town Council adopts a resolution referring the proposed amendment to the Planning Commission, After public notification and the scheduling of a public hearing, the Planning Commission shall conduct a public hearing on the application. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the ~~staff report~~ **Staff Report**, and the public testimony and evidence given at the hearing. After the close of the public hearing, the Planning Commission shall recommend to the Town Council either to approve, or disapprove or change the proposed amendment the application based on the standards in Section 78-202 (B)(4)(e). The report of the Planning Commission's recommendations shall be forwarded to the Town Council.~~

~~(c) After receipt of the recommendation from the Planning Commission, public notification and scheduling a public hearing, the Town Council shall conduct a public hearing on the proposed amendment application.~~

At the public hearing, the Town Council shall consider the proposal application, the relevant support materials, the staff report, the ~~direct~~ recommendation of the Planning Commission, and the public testimony and evidence given at the hearing. After the close of the public hearing, and based on Section 78-202 (B)(4)(e), the Town Council, by a majority vote of those present and voting, shall adopt an ordinance amending the Text of this Chapter, continue the public hearing, refer the application back to the Planning Commission, or disapprove the application. During consideration of an application, the Town Council may make appropriate changes or corrections to the proposed amendment,

(d) Zoning Ordinance Text Amendments shall take effect on the date specified in the associated ordinance approved by the Town Council and shall continue in effect until a subsequent amendment of the Zoning Ordinance Text changes the associated zoning provisions.

(e) The advisability of amending the text of this Chapter is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to adopt or disapprove the proposed amendment, the Town Council may consider whether and to what extent the proposed amendment meets any of the following standards:

1. consistent with the Comprehensive Plan.
2. free of conflict with any provision of this Chapter, related Town regulations, or any other applicable local, state, or federal laws and regulations.
3. changed conditions justify an amendment.
4. addresses a demonstrated community need.
5. consistent with the purpose and intent of the zoning districts in this Chapter, or will improve compatibility among uses and will ensure efficient development within the Town.
6. results in a logical and orderly development pattern consistent with accepted or emerging planning practices.
7. avoids adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
8. results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).

(C) Special Exception

(1) Purpose and Intent

The Special Exception is utilized for a use that is potentially compatible with the other uses permitted in a zoning district, but requires individual review of location, design, configuration, and density and intensity of use and usually requires the imposition of conditions to ensure the appropriateness of the use at a particular location. The purpose and intent of this Section is to establish procedures and standards for review of Special Exceptions.

(2) Authority

(a) The Town Council is authorized to review and approve, approve with conditions, or disapprove an application for a Special Exception pursuant to this section following review and recommendation by the Planning Commission.

(b) Only those uses identified as special exception uses in Section 78-400, *Table of Principal Permitted and Allowed Uses* or Table 78-402(C), *Table of Permitted and Allowed Accessory Uses*, may be considered for a Special Exception under this Section. The designation of a use as a Special Exception in Section 78-400, *Table of Principal Permitted and Allowed Uses* or Table 78-402(C), *Table of Permitted and Allowed Accessory Uses*, does not constitute authorization that such use shall be approved as a Special Exception pursuant to this Section. Rather, each proposed Special Exception use shall be evaluated by the Town Council for compliance with the standards set forth in this Section, the standards for the use in Section 78-401, *Principal Uses: Categories and Types*, and any other relevant considerations.

(3) **Submittal Requirements**

All applications for a Special Exception shall include:

- (a) All the items required in Section 78-201(C), ~~Common Submittal Requirements~~,
- (b) ~~Information as indicated in Section 78-201(C)(8) Contents of Plans. The items required in Section 78-202(A)(4)(d) for generalized development plans;~~ except that the Zoning Administrator may waive one or more of the required information elements if not needed to evaluate the application.
- (c) Applications for development in the Floodplain Overlay District also shall incorporate the following information:
 - 1. For structures that have been elevated, the elevation of the lowest floor, including the basement.
 - 2. For structures that have been flood proofed (nonresidential only), the elevation to which the structure has been flood proofed and the method of elevation.
 - 3. For single family detached dwellings that are being restored or replaced as a result of casualty damage, any flood proofing methods used;
 - 4. A flood study performed by an engineer or other qualified person or agency evaluating the proposed project in relation to flood heights and velocities, the adequacy of the plans for protection and other related matters. Such study shall include the elevation of the 100-year flood before and after the proposed development and any additional information as may be deemed necessary by the Zoning Administrator, to include but not be limited to an engineering study or detailed calculation on any proposed drainage improvement.
 - 5. Topographic information showing existing and proposed ground elevations.

(4) **Procedures**

The procedures and requirements for submittal and review of an application, public notification and scheduling the public hearing are established in Section 78-201, *Review Procedures*. In addition:

- (a) After public notification and the scheduling of a public hearing on the application, the Planning Commission shall conduct a public hearing on the application. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the Staff Report, and the public testimony and evidence given at the hearing. After the close of the public hearing, the Planning Commission shall

recommend to the Town Council either to approve, approve with conditions or disapprove the application based on the standards in Section 78-202(C)(5), *Standards*. The recommendation shall be forwarded to the Town Council.

(b) After receipt of the recommendation from the Planning Commission, and public notification and the scheduling of a public hearing, the Town Council shall conduct a public hearing on the application. At the public hearing, the Town Council shall consider the application, the relevant support materials, the staff report, the recommendation of the Planning Commission, and the public testimony and evidence given at the hearing. After the close of the public hearing, and based on the standards in Section 78-202(C)(5), *Standards*, as well as any other information deemed to be relevant, the Town Council shall either approve, approve with conditions, or disapprove the application.

(c) **Additional Procedure for Floodplain Overlay District**
Within 5 days after an application for a Special Exception in the Floodplain Overlay District is accepted by the Town, the Zoning Administrator shall notify the applicant, in writing, that the issuance of a Special Exception to develop a structure within the Floodplain Overlay District may increase the risks to life and property and will result in increased premium rates for flood insurance.

(5) Standards

(a) A Special Exception may be approved upon a determination by the Planning Commission and Town Council, respectively, as to whether and the extent to which the proposed use (s) meet the following standards:

1. is consistent with the Comprehensive Plan.
2. is free of conflict with any provision of this Chapter and related Town regulations or any other applicable local, state, or federal laws and regulations.
3. affects adversely the health or safety of persons residing or working in the neighborhood of the proposed use.
4. consistent with the purpose and intent of the zoning district in which it is located, or will improve compatibility among uses and will ensure efficient development within the Town.
5. minimizes adverse visual impact of the proposed use on adjacent lands.
6. contributes to a logical and orderly development pattern consistent with accepted or emerging planning practices.
7. minimizes adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and should not create a nuisance.
8. avoids significant adverse impacts on the property values of surrounding lands or substantially and permanently injures the use of neighboring property for those uses that are permitted in the zoning district.
9. does not significantly and adversely impact the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
10. results in development that is adequately served by transportation facilities, including whether or not a substantial deterioration of the level of service on the

Town's transportation network would occur and whether or not the proposed use is designed to ensure safe ingress and egress onto the site and safe road conditions on and around the site.

11. results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).
12. if considered infill and redevelopment, is consistent with the Redevelopment and Infill Guidelines, Chapter 2, Land Use Plan, of the Town's Comprehensive Plan.
13. if located in the Floodplain Overlay District, meets Floodplain Overlay Standards.

(b) Special Review Standards for Floodplain Overlay District

1. Findings: If the land subject to the Special Exception is in the Floodplain Overlay District, the Special Exception shall be approved upon a finding by the Planning Commission and Town Council, respectively, that granting of the permit for the proposed structure, use or both shall not result in:
 - a. Any increase in the established 100-year flood levels in the flood insurance study;
 - b. Other unacceptable or prohibited increases in flood heights;
 - c. Additional threats to public safety;
 - d. Extraordinary public expense;
 - e. Creation of a nuisance;
 - f. Fraud or victimization of the public; or
 - g. Conflict with other Town, state, or federal laws and regulations.
2. Technical Assistance: The planning commission and town council may refer any application and accompanying documentation pertaining to any request for a special exception use permit to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, the adequacy of the plans for protection and other related matters.
3. Factors To Be Considered: The Planning Commission and Town Council shall consider the following factors in making the findings in (a) through (g) above:
 - a. The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - b. The danger that materials may be swept on to other lands or downstream to the injury of others.
 - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 - e. The requirements of the facility for a waterfront location.
 - f. The availability of alternative locations not subject to flooding for the proposed use.
 - g. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- i. The safety of access to the property in time of flood by ordinary and emergency vehicles.
- j. The expected heights, velocity, duration, rate rise, and sediment transport of floodwaters expected at the site.
- k. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- l. Such other factors which are relevant to the purposes of this article.

(c) Special Review Standards for Density and Height in the RM District
The Town Council may permit an increase in the height and density for multi-family structures in the RM District with a Special Exception if the proposed RM development meets the following standards:

- a. The gross density does not exceed 20 dwellings per acre.
- b. The height of buildings does not exceed 50 feet.
- c. The development boundaries do not abut any established subdivision containing single family detached homes.
- d. The proposed development meets standards (other than height and density) in Article III, *Zoning Districts*, Article IV, *Use Regulations*, and other provisions in this chapter.
- e. Additional open space (common or dedicated) above that required by Table 78-301(B): *Table of Dimensional Standards in the Residential Zoning Districts, part two*, is provided in proportion to the requested increase in dwelling unit density.
- f. Additional common recreation space (developed) above that required by Section 78-506, *Privately Provided Recreation Areas*, is provided in proportion to the requested increase in dwelling unit density.

(d) Special Review Standards for Condominium Conversions of Nonconforming Properties

Condominium and cooperative conversions may occur in accordance with Section 78-202 (O) Condominium and Cooperative Conversions. The Town Council may permit the conversion of a non-condominium development that does not conform with currently-adopted zoning regulations to a condominium or cooperative regime with a Special Exception if the development meets the following standards:

- 1. the applicant has submitted an analysis clearly showing the nonconforming features on the property;
- 2. the applicant has presented preferred remedies to either correct or to mitigate each nonconforming feature to the extent possible, using as a guide all applicable standards contained in this Chapter and other Chapters of the Herndon Town Code;

3. nonconformities that cannot be mitigated are not likely to be adversely affected by the proposed conversion;
4. for residential land uses, the application meets the requirements of Section 78-301(C)(3) Residential Condominiums, Condominium and Cooperative Conversions.

(6) Effect

Issuance of a Special Exception shall authorize the particular conditional use that is approved in the permit. A Special Exception, including any conditions, shall run with the land and not be affected by a change in ownership.

(7) Expiration

- (a) Unless specified otherwise by the Town Council, a Building Permit must be issued for the development approved by the Special Exception within 1 year from the date of approval, and development shall be completed within the time allowed under the Town's building regulations, or the Special Exception shall expire and become void.
- (b) Upon written application submitted at least 30 days prior to the expiration of the Special Exception by the applicant, and upon a showing of good cause, the Town Council may grant an extension not to exceed 6 months. The approval shall be deemed extended until the Town Council has acted upon the request for extension.

(8) Revocation

If a use requiring a special exception is found by the zoning administrator to be constructed or to be operating other than as required by the conditions in the approved special exception or in violation of any other section of the Herndon Town Code, the zoning administrator, following reasonable attempts to bring the property into conformance, shall prepare a report and submit it to the Town Council, detailing the nature of the violations. The Town Council may, following a duly ~~duly~~ advertised public hearing, revoke the special exception.

(9) Termination

- (a) A special exception may be terminated by the submittal of a notarized letter from the current owner(s) of the property, addressed to the Zoning Administrator. Upon receipt and verification of such letter, the special exception shall be terminated by the zoning administrator.
- (b) If a use permitted by a special exception is terminated for a period of two years, the zoning administrator may terminate the special exception

(10) Amendment

A Special Exception may be amended, extended, or eliminated in accordance with the procedures and standards established for its original approval.

(11) Reapplication

No application for a Special Exception for the same lot shall be considered by the Town Council within a period of one year from its last consideration. This section, however, shall not impair the right of the Town Council to propose a Special Exception on its own motion.

(D) Variances

(1) Purpose

The purpose of a Variance is to allow certain reasonable deviations from the standards of this Chapter regarding size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure, when the landowner demonstrates that, owing to

special circumstances or conditions beyond the property owner's control (such as exceptional topographical conditions, narrowness, shallowness, or the shape of a specific parcel of land), the strict application of the terms of the Chapter would result in unnecessary or unreasonable hardship to the property owner and such need for the variance would not be shared generally by other properties, and provided the deviation would not be contrary to the public interest or intent of this Chapter. The Variance shall not include a change in use, which should be accomplished rather through the Official Zoning Map Amendment process Section 78-202(A)) or Special Exception (Section 78-202(C)). The purpose and intent of this Section is to establish procedures and standards for review of Variances.

(2) Authority

The Board of Zoning Appeals is authorized to review and approve, approve with conditions, or disapprove an application for a Variance pursuant to the procedures and standards of this Section.

(3) Procedures

- (a)** The procedures and requirements for submittal of an application, public notification and scheduling the public hearing are established in Section 78-201, *Review Procedures*. An application for a variance must include the relevant items listed in Section 78-201(C) ~~Common Submittal Requirements~~ as well as copies of a statement of support for the requested variance.
- (b)** After public notification and scheduling a public hearing, the Zoning Administrator shall transmit a copy of the application to the Board of Zoning Appeals, which shall conduct a public hearing on the application. At the public hearing, the Board of Zoning Appeals shall consider the application, the relevant support materials, the Staff Report, and the public testimony and evidence given at the hearing. After the close of the public hearing, the Board of Zoning Appeals shall approve, approve with conditions, or disapprove the application based on the standards in Section 78-202(D)(4), *Standards*, as well as any other information deemed to be relevant.

(4) Standards

- (a)** A Variance ~~may shall~~ be approved in the event that the Board of Zoning Appeals finds that all of the following standards are met:
1. The property for which the variance is requested was acquired in good faith.
 2. The property is subject to:
 - a. Exceptional narrowness, shallowness, size, or shape;
 - b. Exceptional topographic conditions or other extraordinary situation or condition; or
 - c. Conditions, situations, or development that is unique on immediately adjacent property.
 3. Because of one or several conditions identified in Section 78-202(D)(4)(a)(2), the strict application of this Chapter would produce undue hardship relating to the property, and effectively prohibit or unreasonably restrict the use of the property.
 4. The hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 5. The authorization of the Variance alleviates this clearly demonstrable hardship approaching inability to use the

- property for any purpose (as distinguished from a special privilege or convenience sought by the applicant);
6. The authorization of the Variance will not be of substantial detriment to adjacent property;
 7. In the Floodplain Overlay District, variances shall be issued after the Board of Zoning Appeals has determined that variance will be the minimum required to provide relief from any hardship to the applicant.
 8. The character of the zoning district in which the property is located will not be changed by the granting of the Variance; and
 9. The condition or situation of the property is not of so general or recurring a nature as to warrant the formulation of a regulation or standard to address the condition or situation.

- (b) No use variance shall be granted to allow a use not permitted by right or by special exception in the zoning district in which the property subject to the variance is located.

(5) Conditions of Approval

In approving a Variance, the Board of Zoning Appeals may impose appropriate conditions on the permit approval pursuant to Section 78-201(L), *Conditions of Approval*, to ensure the standards of this Section are met. The conditions may include conditions upon the location, character, and other features of the proposed structure or use as the Board of Zoning Appeals may deem necessary in the public interest. The Board of Zoning Appeals may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. The conditions shall be included as part of the permit approval.

(6) Appeal

Any person jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board, or agency of Fairfax County or the Town, may appeal the decision to the Circuit Court of Fairfax County pursuant to, and within the time limits specified in, Section 15.2-2314, Code of Virginia.

(7) Subsequent Development

Development authorized by the Variance shall not be carried out until the applicant has secured other permits required by this Chapter or any other applicable provisions of the Town. A Variance, in itself, shall not ensure that the development approved as a variance shall receive subsequent approval for other applications for development approval.

(8) Effect

Issuance of a Variance shall authorize the particular variance that is approved in the permit. A Variance, including any conditions, shall run with the land and not be affected by a change in ownership.

(9) Amendment

A Variance may be amended, extended, or eliminated in accordance with the procedures and standards established for its original approval.

(E) Administrative Adjustments

This purpose and intent of this Section is to establish the procedures and standards for Administrative Adjustments. The Zoning Administrator is authorized to review and approve, approve with conditions, or disapprove an application for an Administrative Adjustment pursuant to this Section. For purposes this section, administrative adjustments may be considered for: (a) a building setback dimensional standard to accommodate an error in the siting of a building; and (b) a required setback as a way to accommodate healthy existing trees and their root zones (see Section 78-502(F)).

(1) Submittal Requirements

All applications for an Administrative Adjustment shall include the applicable items required in Section 78-201(C), ~~Common~~ *Submittal Requirements*, as well as the following:

- (a)** A boundary survey of the property;
- (b)** A plan showing the:
 - 1. the name and address of the owner and developer;
 - 2. tax map reference number and street address of the subject property;
 - 3. Town, county, state;
 - 4. north point;
 - 5. date;
 - 6. scale of drawing;
 - 7. number of sheets; and
 - 8. a blank space three inches wide and five inches high for the use of the approving authority.
 - 9. Existing building(s) and use(s);
 - 10. Proposed building or addition;
 - 11. Dimensions and height of structures;
 - 12. Changes in physical improvements;
 - 13. Changes in setback lines;
 - 14. Lot area, zoning district designation, and present record owner of plat; and
 - 15. Any additional information the Zoning Administrator deems appropriate.

(2) Procedure

- (a)** The procedures and requirements for submittal and review of an application are established in Sections 78-201(A-~~I~~ ~~H~~) of Section 78-201, *Review Procedures*.
- (b)** The Zoning Administrator shall review the application pursuant to the requirements of Section ~~78-201(S)~~ 78-201(S) ~~Zoning Administrator Review Procedures~~ *Process for Applications Not Requiring a Public Hearing*.

(3) Standards

An Administrative Adjustment may be approved upon a finding that no other requirement of this chapter is adversely affected and

- (a)** for a building siting error;
 - 1. The building or structure encroaches no more than 18 inches into a yard or setback, and
 - 2. The building or structure does not exceed any setback or yard requirement by more than 5 percent.
- (b)** For an adjustment to a required setback:
 - 1. the encroachment in a required building setback is no greater than five percent;

2. the community forester has verified that the adjustment would help accommodate healthy existing trees ~~trees~~ and their root zones.

(4) Subsequent Development

Development authorized by the Administrative Adjustment shall not be carried out until the applicant has secured other permits required by this Chapter or any other applicable provisions of the Town. An Administrative Adjustment, in itself, shall not ensure that the development approved as an Administrative Adjustment shall receive subsequent approval for other applications for development permit or approval.

(5) Effect

Issuance of an Administrative Adjustment shall authorize the particular Administrative Adjustment that is approved in the permit. An Administrative Adjustment, including any conditions, shall run with the land and not be affected by a change in ownership.

(6) Amendment

An Administrative Adjustment may be amended, extended, or modified in accordance with the procedures and standards established for its original approval.

(F) Site Plans, Single Lot Development Plan and Building Location Surveys

(1) Applicability

All development, unless exempted pursuant to Section 78-202(F)(2), *Exemptions*, shall have a site plan, single lot development plan or building location survey reviewed and approved pursuant to the procedures and standards of this Section and prior to issuance of a Building Permit. ~~Any such approved site plan~~ may be amended or extended in accordance with the procedures in this Section.

This Section establishes procedures and standards for review of site plans, single lot development plans and building location surveys to ensure development complies with the ~~site and~~ development standards of this Chapter and other related Town ordinances and regulations, and state and federal regulations. These ~~site plan~~ review procedures and standards are intended to:

- (a) Ensure the layout and general design of proposed development is compatible with surrounding land uses and complies with applicable provisions of this Chapter;
- (b) Foster consultation and cooperation between neighborhoods and developers proposing to develop land and the Town;
- (c) Balance rights of the property owner with the development goals of the Town and the rights of adjacent landowners;
- (d) Minimize the adverse impacts of development on the investments of surrounding landowners;
- (e) Ensure site design minimizes negative impacts on the environment, drainage, soil erosion, and stormwater control;
- (f) Ensure the arrangement, location, and design of development is consistent with the character of the area and the goals of the Comprehensive Plan including but not limited to aesthetics, the environment, historic resources, property values, quality of life, and other public health, safety and welfare objectives;
- (g) Ensure site design minimizes negative impacts on roadway capacity, the safety of motorists and pedestrians, utilities, and community facilities and services;
- (h) Ensure safe and efficient circulation for motorized and non-motorized traffic and pedestrians within and adjacent to sites; and

- (i) Provide for the gradual upgrade of existing sites that do not conform with existing standards.

(2) Exemptions

The following development is exempt from the requirements of this Section. Other portions of this chapter or the Herndon Town Code may apply:

- ~~(a) Subdivisions of three or more lots for single family detached dwelling units.~~
- (a) Additions, structures, and buildings less than ~~250~~ 150 square feet in size located within any residential district allowing single family detached or duplex dwellings.
- (b) The internal construction or alteration of the floor area of a development which does not increase gross floor area, increase the intensity of use, or increase the number of parking spaces required. ~~if the development complies with all the standards of Article V: Development Standards;~~
- (c) ~~Land disturbance not otherwise associated with a site plan or subdivision plan grading, excavation, filling, soil removal, or clearing of trees within an area of less than 2,500 square feet. although other portions of the Herndon Town Code may apply except review shall be accomplished as may be otherwise required in accordance with the provisions of Section 78-304(D) Chesapeake Bay Preservation Overlay District.~~
- (d) Certain temporary uses in accordance with Section 78-403, *Temporary Uses and Structures*.

(3) Site-Plans that May be Approved Administratively

- (a) The following are plans that may be approved administratively:
1. Building location survey;
 2. Single lot development plan;
 3. Minor site plan;
 4. Temporary use site plan;
 5. Final site plan associated with an approved generalized development plan.
- (b) Procedure for Plans that may be Approved Administratively
1. The basic procedures and requirements for submittal and review of an application are established in 78-201, Review Procedures.
 2. The Zoning Administrator shall review the application pursuant to the requirements of Section 78-201(S), Review Process for Applications Not Requiring a Public Hearing except the Zoning Administrator shall reclassify an application as an application for a Site Plan that Requires a Public Hearing if it is determined the proposed development will have a major local or community impact on traffic or other public facilities. If this determination is made, the application shall be reviewed as a site plan pursuant to Section 78-202(F)(4), Site Plans that Require a Public Hearing. The Zoning Administrator's determination shall be supported by written findings of fact justifying the determination.
 3. The applicant may appeal a final decision of the Zoning Administrator on the administrative approval or disapproval of a site plan or single lot development plan to the Town Council within 30 days of the decision.

4. If a final decision of the Zoning Administrator is appealed pursuant to this Section, the Zoning Administrator shall schedule a hearing on the appeal at the earliest feasible meeting of the Town Council. At the hearing, the Town Council shall consider the appeal and application, the relevant support materials, the Staff Report, the decision of the Zoning Administrator, and the testimony and evidence given at the hearing. After the close of the hearing, and based on the standards in Section 78-202(F)(5), *Standards*, the Town Council shall either affirm, modify or reverse the decision of the Zoning Administrator on the application.
5. Applications for plans that may be approved administratively shall include the applicable items in Section 78-201(C) ~~Common~~ *Submittal Requirements*. Furthermore, plans submitted with applications for single lot developments, minor site plans, and temporary uses also shall contain the information indicated in Table 78-202(F)(3).

Table 78-202(F)(3): CONTENT REQUIREMENTS FOR SITE PLANS
THAT MAY BE APPROVED ADMINISTRATIVELY (Minor Site Plans, Temporary Use Site
Plans) AND SINGLE LOT DEVELOPMENT PLANS

| | Key: • <u>Required information</u> | <u>Single Lot Develop- ment Plan</u> | <u>Minor Site Plan</u> | <u>Tempo- rary Use Site Plan</u> |
|-----------|---|--|--------------------------------|--|
| <u>1</u> | <u>Applicable provisions in Section 78-201(C) <i>Submittal Requirements</i>.</u> | • | • | • |
| <u>2</u> | <u>Town cover sheet filled out</u> | • | | |
| <u>3</u> | <u>Identification information on location, owner, developer, contact person's name, address, and telephone number;</u> | • | • | • |
| <u>4</u> | <u>Pro-rata share calculation for storm drainage, as shown on the cover sheet;</u> | • | | |
| <u>5</u> | <u>Conservation cash escrow (bond) calculation, including: erosion and siltation control, tree protection, tree replacement, new landscape material, and damage to existing utilities, as calculated on the cover sheet.</u> | • | | |
| <u>6</u> | <u>The plan review fee as calculated on the cover sheet</u> | • | | |
| <u>7</u> | <u>Tax map reference number and location of the subject property by street address, Town, County and State;</u> | • | • | • |
| <u>8</u> | <u>North arrow;</u> | • | • | |
| <u>9</u> | <u>Date;</u> | • | • | • |
| <u>10</u> | <u>Number of sheets;</u> | • | • | • |
| <u>11</u> | <u>Scale at which plan is drawn (1" = 30' minimum)</u> | • | • | • |
| <u>12</u> | <u>Signature of the preparer</u> | • | • | • |
| <u>13</u> | <u>Existing topography with a maximum of two-foot contour intervals. Where existing ground is on a slope of less than two percent either one-foot contours or spot elevations where necessary but not more than 50 feet apart in both</u> | • | | |

**Table 78-202(F)(3): CONTENT REQUIREMENTS FOR SITE PLANS
THAT MAY BE APPROVED ADMINISTRATIVELY (Minor Site Plans, Temporary Use Site
Plans) AND SINGLE LOT DEVELOPMENT PLANS**

| | Key: • Required information | Single Lot Develop- ment Plan | Minor Site Plan | Tempo- rary Use Site Plan |
|-----------|--|-------------------------------------|-----------------------|------------------------------------|
| | <u>directions; existing topography shall extend at least 10 feet beyond the boundary of the site.</u> | | | |
| 14 | <u>Proposed finished grading by contours supplemented where necessary by spot elevations.</u> | • | • | |
| 15 | <u>Location, height, floor elevation, area, proposed and permitted lot coverage, etc. for new structures.</u> | • | • | |
| 16 | <u>Over lot grading and drainage, with a stormwater narrative setting forth how stormwater will drain from the property without adversely affecting other properties or the public stormwater system.</u> | • | • | |
| 17 | <u>Soil erosion and siltation control measures</u> | • | • | |
| 18 | <u>Features described in Section 78-513, <i>Single Lot Development</i>, or a request for a waiver from providing such features if the criteria are met.</u> | • | | |
| 19 | <u>Property corner markers</u> | • | | |
| 20 | <u>Landscaping plan showing proposed and existing materials.</u> | • | • | |
| 21 | <u>Description of location and type of alien, invasive plant species to be removed from the site in accordance with Section 78-503(l)(1)(b).</u> | • | • | • |
| 22 | <u>Existing trees and tree protection measures for trees to remain.</u> | • | • | • |
| 23 | <u>All trees located off-site which have drip lines extending into the site shall be shown on the plan and considered as within the site for purposes of protective field practices.</u> | • | | |
| 24 | <u>Site-specific delineation of Resource Protection Areas</u> | • | • | • |
| 25 | <u>Compliance with the Chesapeake Bay Preservation Area Overlay District regulations, or evidence of exemption from approval from Resource Management Area requirements.</u> | • | • | |
| 26 | <u>A boundary survey of the property</u> | • | • | |
| 27 | <u>Existing use of building;</u> | | • | |
| 28 | <u>Proposed change in use;</u> | | • | |
| 29 | <u>Proposed building or addition;</u> | • | • | |
| 30 | <u>Dimensions and height of structures</u> | • | • | |
| 31 | <u>Changes in physical improvements</u> | • | • | |
| 32 | <u>Changes in setback lines;</u> | • | • | |
| 33 | <u>Lot area, zoning district designation, street address and present record owner of plat;</u> | • | • | |
| 34 | <u>A sketch showing the area of proposed activity with signage, display areas, if any, and any proposed illumination. If possible, the sketch should be provided on a copy of a previously approved site plan.</u> | | | • |

**Table 78-202(F)(3): CONTENT REQUIREMENTS FOR SITE PLANS
THAT MAY BE APPROVED ADMINISTRATIVELY (Minor Site Plans, Temporary Use Site
Plans) AND SINGLE LOT DEVELOPMENT PLANS**

| | Key: • Required information | Single Lot Develop- ment Plan | Minor Site Plan | Tempo- rary Use Site Plan |
|-----------|---|-------------------------------------|-----------------------|------------------------------------|
| <u>35</u> | Hours of operation for the proposed activity; | | | • |
| <u>36</u> | The location, type, and size of proposed vehicular entrances to site; | • | | • |
| <u>37</u> | The location, layout, and surface material of the proposed parking area associated with the proposed activity | • | | • |
| <u>38</u> | Any additional information the Zoning Administrator deems appropriate | • | • | • |
| <u>39</u> | The Zoning Administrator may request additional information, as reasonable, if necessary for the evaluation of the application. | • | • | • |
| <u>40</u> | Prior to submittal of the application materials, the applicant may request that the Zoning Administrator approve relief from any specific submittal requirements listed in this table, Section 78-201(C) or elsewhere if the Zoning Administrator or Subdivision Administrator deems such requirements unnecessary for the evaluation of the application. | • | • | • |
| <u>41</u> | Any additional information that the applicant may desire to provide in the consideration of the application. | • | • | • |

Site plans for a development for which the Town Council has approved a Generalized Development Plan, provided the Town Council, in its action approving the GDP, specifically authorized the applicant to submit the final site plan for administrative approval, and may be approved administratively. Such application shall include the items required in Section 78-201 (C) Common Submittal Requirements, as well as items required in 78-202(F)(4), *Site Plans that Require a Public Hearing*.

(c) Building Location Survey

1. Development, other than construction of residential decks, that requires a building permit and that does not require a subdivision plan, site plan, or single lot development plan must submit an application for review and approval of a building location survey prior to applying for a building permit.
2. A building location survey must be prepared to scale and must show:
 - a. boundary survey of the property based on record data and containing the seal of a licensed preparer;
 - b. size and location of existing and proposed structures with dimensions;

- c. distances from all structures to all lot lines;
- d. height and number of stories of existing and proposed buildings;
- e. existing and proposed easements;
- f. existing and proposed impervious surfaces with dimensions;
- g. any structures proposed for demolition as part of the building permit;
- h. signature of the preparer.

(d) Single Lot Development Plan

1. ~~The following development of homes, replacement of homes, or enlargement of homes by an amount greater than one quarter the area of the building or 500 square feet, which ever is less, on individual residential lots (single family detached or duplex lot-by-lot development) shall be in accordance with the requirements of this section and all other applicable sections of this chapter, regardless of when the lot was created. Lots within subdivisions of three or more lots approved on or after July 1, 2006, are not eligible for single lot development and shall conform to regulations in Herndon Town Code, Chapter 70, Subdivision of Land, as well as other regulations in this chapter.~~
 - a. Land disturbance of 2,500 square feet or more, with or without any other construction.
 - b. Construction or replacement of a dwelling.
 - c. Construction, replacement or enlargement of an accessory building when the alteration is 750 square feet of floor area or more.
 - d. Enlargement of a dwelling when the footprint of the enlargement is 750 square feet or more, measured from the exterior walls of the proposed addition.
2. In addition to the submittal requirements listed in ~~this~~ Section 78-202-(F)(3)(b), Procedure for Plans that may be Approved Administratively, standards in Section 78-513, *Single Lot Development*, also apply.
3. Prior to issuance of a certificate of occupancy for any new or replacement dwelling built in accordance with a single lot development plan, the applicant shall submit for approval a house location survey on sheets of eight and one half inches by 14 inches prepared in accordance with the rules and regulations adopted by the Commonwealth of Virginia, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (APELSLA) and shall also show the following:
 - a. the distance from all structures to all lot lines;
 - b. the elevation of the floor plate and the height of the building;
 - c. the deed book and page number for the easements and conveyances shown on the plat.
4. ~~Submittals shall comply with the requirements of Section 78-201 (C), Common Submittal Requirements, except that submittals shall include nine sets of lot development~~

plans prepared by a licensed engineer or surveyor using
24" x 36" blue-line paper and including:

- a. a Town cover sheet completed with the following information:
 - i. Identification information on location, owner, developer, contact person's name, address, and telephone number;
 - ii. Pro-rata share calculation for drainage;
 - iii. Conservation cash escrow (bond) calculation, including: erosion and siltation control, tree protection, tree replacement, new landscape material, and damage to existing utilities.
- b. Existing topography with a maximum of two-foot contour intervals. Where existing ground is on a slope of less than two percent either one-foot contours or spot elevations where necessary but not more than 50 feet apart in both directions; existing topography shall extend at least 10 feet beyond the boundary of the site.
- c. Proposed finished grading by contours supplemented where necessary by spot elevations.
- d. Location, height, floor elevation, area, proposed and permitted lot coverage, etc. for new structures.
- e. Over lot grading and drainage, with a storm water narrative setting forth how storm water will drain from the property without adversely affecting other properties or the public storm water system.
- f. Soil erosion and siltation control measures.
- g. Features described in Section 78-513, Single Lot Development, or a request for a waiver from providing such features if the criteria are met.
- h. Property corner markers.
- i. Landscaping plan showing proposed and existing materials.
- j. Existing trees and tree protection measures for trees to remain.
- k. All trees located off-site which have drip lines extending into the site shall be shown on the plan and considered as within the site for purposes of protective field practices.
- l. Compliance with the Chesapeake Bay Preservation Area Overlay District regulations, or evidence of exemption from approval from Resource Management Area requirements.
- m. The plan review fee as calculated on the cover sheet.

(e) Minor Site Plan (for uses other than single family detached or duplex dwellings)

The following development constitutes a minor site plan and shall be reviewed pursuant to this section:

- a. Additions to existing buildings, other than single family detached or duplex dwellings, when the addition does not exceed one-quarter of the gross floor area of the original building or 1,500 square feet, whichever is smaller;

- b. Accessory buildings appurtenant to nonresidential uses and containing less than 1,500 square feet;
- c. Land disturbance ~~For areas~~ of 2,500 square feet or more larger: any grading, excavation, filling, soil removal, clearing of trees, or paving;
- d. Walls above 7 feet in height; ~~and~~
- e. Permanent outdoor display areas, permanent outdoor seating areas for 25 or fewer seats, additional sidewalks, parking spaces, landscaping, and similar minor changes; and
- f. Other site plans which in the judgment of the zoning administrator contain minor changes in the physical improvements of a previously approved site development plan.

~~All applications for a Minor Site Plan shall contain information deemed necessary by the Zoning Administrator for the scope of each application, including any or all of the items required in Section 78-201(C), Common Submittal Requirements, as well as the following:~~

- ~~g. A boundary survey of the property;~~
- ~~h. A plan showing the:~~
 - ~~i. Existing use of building;~~
 - ~~ii. Proposed change in use;~~
 - ~~iii. Proposed building or addition;~~
 - ~~iv. Dimensions and height of structures;~~
 - ~~v. Changes in physical improvements;~~
 - ~~vi. Changes in setback lines;~~
 - ~~vii. Lot area, zoning district designation, street address and present record owner of plat; and~~
 - ~~viii. Any additional information the Zoning Administrator deems appropriate.~~

(f) Temporary Uses Site Plans

Temporary uses of a duration of 45 days or longer shall undergo site plan review pursuant to this section. Procedures for site plans for temporary uses are described in Section 78-202 (G), Temporary Use Site Plans Permits. Other provisions for temporary uses appear in Article IV, Use Standards.

1. The provisions of this Section shall apply to proposed temporary uses as set forth in Section 78-403, Temporary Uses or Structures.
2. Applications for a temporary use shall include the applicable requirements of Section 78-201 (C), Submittal Requirements, the information indicated in Table 78-202(F)(3) Content Requirements for Site Plans that may be Approved Administratively (Minor Site Plans, Temporary Use Site Plans) and Single Lot Development Plans and the following:
 - a. Contact information for a party who has agreed to be responsible in the event that the temporary use is found to be in violation of this Ordinance, including phone number, street address, permanent residence, and adequate proof of the validity of the contact information provided.

- b. A letter signed by the owner or owner's agent consenting to the submittal of the application shall be submitted. If the letter included with the application is faxed or photocopied, the letter containing the original signature shall be submitted to the Town within five business days of application submittal.
- c. A written description of the proposed activity, including an analysis of any noise that may not comply with the noise provisions in the Herndon Town Code; and associated signage.
3. The procedures and requirements for submittal and review of an application are established in Section 78-201, Review Procedures. The Zoning Administrator shall review the application consistent with the requirements of Section 78-201(S), Zoning Administrator Review Procedures. Site plans for temporary uses may be approved administratively unless a public hearing is specifically require for a particular use as described in Section 78-403. A zoning inspection permit is required for temporary uses for which a temporary use permit is required .

~~4. The procedures and requirements for submittal and review of an application are established in 78-201, Review Procedures.~~

~~5. The Zoning Administrator shall review the application pursuant to the requirements of Section 78-201(S), Zoning Administrator Review Procedures, except the Zoning Administrator shall reclassify an application as an application for a Site Plan that Requires a Public Hearing if it is determined the proposed development will have a major local or community impact on traffic or other public facilities. If this determination is made, the application shall be reviewed as a Site Plan pursuant to Section 78-202(F)(4), Site Plans that Require a Public Hearing. The Zoning Administrator's determination shall be supported by written findings of fact justifying the determination.~~

(g) Final Site Plan Associated with an Approved Generalized Development Plan

Site plans for a development for which the Town Council has approved a Generalized Development Plan, provided the Town Council, in its action approving the GDP, specifically authorized the applicant to submit the final site plan for administrative approval, and may be approved administratively. Such application shall include the items required in Section 78-201 (C) Submittal Requirements, including items required in 78-201(C)78-201(C)(8) Contents of Plans.

(4) Site Plans that Require a Public Hearing

- (a)** The Town Council is authorized to review and approve or disapprove an application for a site plan pursuant to this Section.

(b) ~~All~~ Applications for a site plan that requires a public hearing shall include the items required in Section 78-201(C), ~~Common Submittal Requirements~~, ~~as well as the following:~~

- ~~1. A traffic impact study for the proposed use(s) prepared in accordance with Town standards;~~
- ~~2. A Site Plan including the following information:~~
 - ~~a. Name and address of owner;~~
 - ~~b. Name and address of developer;~~
 - ~~c. Location by street address, Town, County and state;~~
 - ~~d. Date and scale of drawings;~~
 - ~~e. Number of sheets;~~
 - ~~f. Tax map reference number;~~
 - ~~g. North arrow;~~
 - ~~h. Current zoning;~~
 - ~~i. Total site area;~~
 - ~~j. Proposed uses;~~
 - ~~k. Owner, zoning, and present use of adjacent property;~~
 - ~~l. Location of tract by an insert map at a scale of not less than one inch equals 2,000 feet, indicating sealed coordinates referred to in USC&GS; state grid north and such information as the names and numbers of adjoining roads, streams and bodies of water, railroads, subdivisions, towns and magisterial districts or other landmarks sufficient to clearly identify the location of the property;~~
 - ~~m. A boundary survey of the tract with an error of closure within the limit of one in 10,000 related to the true meridian and showing the location and type of boundary evidence. The survey may be related to USC&GS state grid north if the coordinates of two adjacent corners are shown; provided, however, that such information may be provided from recorded plats in case of lots in subdivisions recorded subsequent to October 1, 1964;~~
 - ~~n. Certificate signed by the surveyor or engineer setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title;~~
 - ~~o. Location, type and size of pedestrian and vehicular circulation facilities on the site, including:~~
 - ~~i. Design of vehicular entrances and exits in relation to streets giving access to the site and in relation to pedestrian traffic;~~
 - ~~ii. Adequate provision for traffic circulation and control within the site and providing access to adjoining property.~~
 - ~~p. Existing and proposed streets: their names and widths;~~
 - ~~q. Existing and proposed easements: their type and size;~~
 - ~~r. Existing and proposed above and below ground utilities, including electric and communications;~~
 - ~~s. Watercourses and their names;~~
 - ~~t. Parking areas (on and off street):~~
 - ~~i. Number of spaces required;~~
 - ~~ii. Number of spaces provided;~~
 - ~~iii. Handicapped spaces;~~
 - ~~iv. Size and angle of stalls;~~

- ~~v. Loading spaces;~~
- ~~vi. Associated walkways;~~
- ~~vii. Type of surfacing;~~
- ~~viii. Aisle width;~~
- ~~u. Setback lines;~~
- ~~v. Building restriction lines;~~
- ~~w. Buildings:~~
 - ~~i. Dimensions;~~
 - ~~ii. Finished floor elevations;~~
 - ~~iii. Floor area;~~
 - ~~iv. Number of floors;~~
 - ~~v. Height of building;~~
 - ~~vi. For residential buildings, the number, size and type of dwelling units;~~
- ~~x. Compliance with applicable established design criteria, construction standards and specifications for improvements required by ordinance or a duly adopted resolution by the Town Council;~~
- ~~y. All existing and proposed water and sanitary sewer facilities, indicating pipe sizes, types and grades and where connection is to be made to the town or other utility system;~~
- ~~z. Provisions for fire protection;~~
- ~~aa. Provisions for the adequate disposition of natural water and storm water in accordance with the duly adopted design criteria and standards of the town, indicating location, sizes, types and grades of ditches, catch basins and pipes and connections to existing drainage system;~~
- ~~bb. Existing topography with a maximum of two foot contour intervals. Where existing ground is on a slope of less than two percent either one foot contours or spot elevations where necessary but not more than 50 feet apart in both directions; existing topography shall extend at least 10 feet beyond the boundary of the site;~~
- ~~cc. Proposed finished grading by contours supplemented where necessary by spot elevations;~~
- ~~dd. Visual and acoustical screening of property; location, type, size and height;~~
- ~~ee. Visual and acoustical screening of mechanical equipment (roof mounted and ground mounted);~~
- ~~ff. Provision for the adequate control of erosion and sedimentation, indicating the proposed temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading and construction;~~
- ~~gg. On-site lighting in conformance with Section 78-515 (I);~~
 - ~~i. Height of fixtures;~~
 - ~~ii. Architectural style;~~
 - ~~iii. Location;~~
 - ~~iv. Levels of illumination;~~
- ~~hh. Bulk solid waste receptacles in conformance with Section 78-516;~~
 - ~~i. Location;~~

- ~~ii. Visual and acoustical screening enclosure and associated landscaping including plans and measures to facilitate the replacement of the bulk solid waste receptacle behind or within the screening enclosure after access or service;~~
- ~~ii. A tree survey prepared by an ISA Certified Arborist. The tree survey shall accurately identify all existing trees located within the site located them on the Site Plan submittal in accordance with the following criteria:~~
 - ~~i. All existing trees having a caliper of eight inches or greater when measured four feet, six inches above the ground or a tree stand delineation as approved for group identification by the community forester;~~
 - ~~ii. All ornamental trees including, but not limited to: Dogwood (Cornus), American Holly (Ilex opaca), Shadblow (Amelanchier species), Eastern Redbud (Cercis canadensis) and Fringe Tree (Chionanthus virginicus) having a caliper of two to four inches measured at six inches above the ground or a caliper greater than four inches measured at 12 inches above the ground shall also be included in the inventory;~~
 - ~~iii. The limits of clearing shall be located at the outermost limits of the area to be cleared, shall be accurately shown and labeled and shall not include any unnecessary clearing;~~
 - ~~iv. Groups of trees and individual trees standing alone that will be retained on the site shall be accurately identified and located on the survey;~~
 - ~~v. Designated "tree protection areas" shall be accurately identified and located on the survey;~~
 - ~~vi. In order for existing trees to be retained in a parking lot area, sufficient ground, as determined by an arborist for the town, shall be left ungraded around each tree to allow for its survival. Proper arboriculture measures, as adopted by the community forester, may be required to allow for its survival;~~
 - ~~vii. The location of tree wells and tree walls shall be accurately located on the site plan;~~
 - ~~viii. All trees within the site and shown to be saved on the site plan shall be shown according to the total spread of the tree canopy/crown/cover at the drip line;~~
 - ~~ix. All trees located off site which have drip lines extending into the site shall be shown on the site plan and considered as within the site for purposes of protective field practices;~~
 - ~~x. Applicable diagrams of standard tree protection devices shall be provided as part of any site plan submittal;~~
 - ~~xi. There shall be a notation on the site plan prohibiting disturbance inside the tree~~

~~protection areas. Prohibited disturbance includes, but is not limited to: grading, clearing, storage of materials, dumping of materials, and parking or transporting of vehicles and equipment.~~

~~jj. Landscape Plan in accordance with Section 78-503(C)(2);~~

~~kk. Existing and proposed open space; and~~

~~ll. Delineation of Resource Protection Areas, as may be required in Section 78-304(D) of this Chapter.~~

- (c) The procedures and requirements for submittal and review of an application, public notification, and scheduling of a public hearing are established in Section 78-201, *Review Procedures*.
- (d) After public notification and the scheduling of a public hearing, the Planning Commission shall conduct a public hearing on the application. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the Staff Report, and the public testimony and evidence given at the hearing. After the close of the public hearing, the Planning Commission shall recommend to the Town Council either to approve or disapprove the application based on the standards in Section 78-202(F)(5), *Standards*. The recommendation shall be forwarded to the Town Council.
- (e) After receipt of the recommendation from the Planning Commission, and after public notification and the scheduling of a public hearing, the Town Council shall conduct a public hearing on the application. At the public hearing, the Town Council shall consider the application, the relevant support materials, the Staff Report, the recommendation of the Planning Commission, and the public testimony and evidence given at the hearing. After the close of the public hearing, and based on the standards in Section 78-202(F)(5), *Standards*, the Town Council shall approve, defer or disapprove the application. If the application is deferred or disapproved, notification to the applicant shall be made during the hearing and in writing consistent with the provisions in Section 78-201(N), *Notification of Decision*.

(5) Standards

A site plan ~~that requires a public hearing, a site plan that may be approved administratively, and a single lot development plan may~~ shall be approved upon a determination by the decision-making authority that the development and uses proposed ~~in the Site plan and its~~ and the general layout and design comply with:

- (a) Section 78-401, *Principal Uses: Categories and Types*.
- (b) All appropriate standards in Article V: Development Standards.
- (c) Conventional practices for providing safe ingress and egress onto the site and safe road conditions around the site.
- (d) All other applicable standards, provisions and regulations of this Chapter, other Chapters of the Herndon Town Code, and any applicable Federal, State or Local laws.

(6) Performance Guarantees

Performance guarantees shall be posted in accordance with the standards in Section 78-204, *Performance Guarantees*.

(7) Required Improvements

All improvements shall be shown on the site plan (excluding a single lot development plan) and installed at the cost of the applicant in accordance with the Town of Herndon Public Facilities Manual (1997), as amended, as described in Section 1-16 of the Herndon Town Code, and the following standards:

- (a) Designation of pedestrian walkways so that patrons may walk safely and conveniently on such walkways from store to store or building to building within the site and to adjacent sites, and to the public right-of-way;
- (b) Provision of adequate vehicular access facilities to and within the site and between adjacent sites, given consideration to the nature of the site, the proposed use, adjacent sites and uses, and the nature of roadways serving the site, and with the overall objective of providing optimal vehicular access and circulation to and within the site, while minimizing interference with through traffic on the road network. In furthering this objective, the following improvements may be required:
 - 1. Construction and dedication of an interparcel access drive or drives to provide vehicular travel to and from adjacent parking areas and property, constructed according to Town specifications. The setback requirements shall be no greater if the access drive is dedicated than without the dedication; and
 - 2. Any additional requirements for access as required by the Fire Marshal.
- (c) Screening, landscaping, ~~and recreational and~~ open space, and curb and gutter as required by the provisions of this Chapter.
- (d) Easements or rights-of-way, clearly defined for the purposes intended, for facilities to be publicly maintained.
- (e) Curb and gutter
 - 1. shall be required:
 - a. for travel lanes or driveways that provide vehicular travel to and from adjacent parking areas or adjacent property for the purpose of separating same from parking areas and walkways.
 - b. around the perimeter of all parking areas. Such curb and gutter shall meet the requirements of the public facilities manual adopted by the town.
 - c. along the street frontage of the subject property and along any streets to be constructed as part of the subject development.
 - 2. may be waived
 - a. upon a determination by the reviewing authority that such waiver will (i) be of benefit for the natural environment and stormwater management practices; (ii) will not have an adverse impact on the site and on the surrounding area; and (iii) upon consideration of the following items:
 - i. stated reasons for the request for the waiver.;
 - ii. Size of the parking and loading area(s) and the percentage of these areas proposed for the waiver.
 - iii. Resultant effect of the modification or waiver on the natural environment, storm drainage, water quality and E&S based upon information, including an engineering study if requested by

- the reviewing authority, provided by the applicant or other sources.

- iv. Type of vehicles that will use the facility and frequency of use.

- b. The reviewing authority may approve or deny such request and may impose such conditions, restrictions and time limitations as may be deemed necessary to assure that the streets, travel lanes, driveways and off-street parking and/or loading areas will be compatible with and will not adversely impact the adjacent area. Such conditions and restrictions may include but need not be limited to, the following:

- i. A detail of the edge of pavement conditions shall be shown on the site plan in the area where the waiver is requested.
- ii. the location subject to the waiver of curb and gutter may be restricted.
- iii. The waiver of curb and gutter may be revoked upon a change in the use of the site, site conditions or adjacent properties if the change warrants the provision of curb and gutter.
- iv. Where a special typical section is approved, details shall be provided on plans

- (f)** Adequate site lighting as required by this Chapter and other relevant Town regulations and policies.
- (g)** New and existing utilities placed below ground, in accordance with accepted standards of utility practice for underground construction. The developer shall be responsible for arranging with the appropriate utility so that new, existing, or relocated distribution and customer service utility facilities, carrying or used in connection with water, sanitary sewer, electric power, communications, cable television, petroleum, gas or steam, installed within the boundaries of the site, or within the adjacent public right-of-way shall be placed below the surface of the ground. The following equipment may be installed above ground on the site, and shall be shown on the site plan:
1. Equipment such as electric distribution transformers, switchgear, meter pedestals, and telephone pedestals which is normally installed above ground in accordance with accepted utility practices for underground distribution;
 2. Meters, service connections, and similar equipment normally attached to the outside wall of the premises they serve; and
 3. Temporary overhead facilities required for construction purposes.
- (h)** Where allowed by law, dedication, construction, and improvement of an abutting street, highway, or portion thereof when the subject property of a site plan abuts a public street or any other street appearing on the Comprehensive Plan map adopted by the Town Council, or any street which may be required for the general welfare and safety in conformance with established criteria, construction standards, and specifications of the Town.
- (i)** The dedication requirements for public streets shall apply to internal streets needed to serve the development proposed in a site plan except in cases where the internal streets are to remain private. Private streets

and driveways in residential developments shall be built to public street standards.

- (j) Provision of any other required improvements identified in this Chapter or the Subdivision Ordinance.

(8) Expiration

Site plan and single lot development plan approval shall automatically expire at the end of a 5 year period following the date of its final approval by the Zoning Administrator for any phase or part of an approved site plan for which if a Building Permit for at least 1 building in the development proposed in the site plan is has not been approved. No building permit shall be approved and no site development shall be commenced after the expiration of the five-year period of validity. Thereafter, any undeveloped portion of the site can be developed only in accordance with a new site plan approved according to standards in effect at the time of the subsequent approval. A change in ownership of the property does not affect this provision time frame.

Upon written application submitted at least 30 days prior to the expiration of the validity period by the applicant and upon a showing of good cause, the reviewing authority that approved the site plan or single lot development plan may grant an extension not to exceed 6 months. The approval shall be deemed extended until reviewing authority has acted upon the request for extension.

(9) Revision, Change, or Erasure

No revision, change, or erasure shall be made on any approved single lot development plan, site plan or accompanying data sheets unless the reviewing authority that approved the plan Site Plan has approved the change, except as otherwise provided.

(10) Waiver

In the case of a site plan requiring a public hearing, the Town Council may waive any requirement of this section upon the recommendation of the Planning Commission in specific cases where such requirement is found to be unreasonable and such waiver will not be adverse to the intent of this Chapter. In the case of a site plan that may be approved administratively or a single lot development plan, the Zoning Administrator may waive any requirements of this section in specific cases where such requirement is found to be unreasonable and such waiver will not be adverse to the intent of this Chapter.

(11) Minor or Technical Changes

The Zoning Administrator may approve minor or technical changes to an approved site plan.

(12) Finality

A site plan or single lot development plan shall be deemed final once it has been reviewed and approved by the Town, including the recordation of associated plats and acceptance by the Town of any performance guarantees (Section 78-204). The Zoning Administrator's signature on the final site plan or single lot development plan shall indicate that all requirements, including the posting of performance guarantees, have been met and that the final site plan or single lot development plan is approved.

(13) Inspection and Supervision During Installation

- (a) Unless specifically provided for in this Chapter, the construction standards for off-site public improvements and on-site public

improvements required by this Section shall conform to the Town design and construction standards. The Public Works Director shall approve the plans and specifications for required public improvements and shall inspect the construction of such improvements to ensure conformity thereto.

- (b) Inspections during the installation of the off-site public improvements and required on-site public improvements shall be made by the department responsible for such improvements as required to certify compliance with the approved site plan or single lot development plan and applicable standards.
- (c) The owner, owner's agent, or developer shall notify the public works director, in writing, three days prior to the beginning of street or storm sewer work shown to be constructed on the site plan or single lot development plan.
- (d) The owner, owner's agent, or developer shall provide adequate supervision on the site during the installation of required public improvements and have a responsible superintendent or foreman, together with one set of approved plans, profiles, and specifications available at the site at all times when work is being performed.
- (e) The installation of improvements as required in this Chapter shall in no case serve to bind the Town to accept such improvements for the maintenance, repair, or operation thereof, but such acceptance shall be subject to the existing regulations concerning the acceptance of each type of improvement.

(14) As Built Site Plan

~~Upon satisfactory completion of the installation of required public improvements as shown on the approved site plan or a section thereof, the developer shall submit to the office of the Zoning Administrator four copies of an as-built site plan, certified by the engineer or surveyor. The as-built site plan shall be reviewed and approved by the Department of Public Works prior to the final release of the performance guarantee.~~

Upon completion of development associated with any application other than a single lot development plan, a minor site plan, or a temporary use site plan, an as-built plan shall be submitted in accordance with following provisions.

- (a) Upon final completion of the development, three copies of a certified "as-built" plan prepared by a licensed professional engineer or licensed land surveyor registered in the state, shall be submitted to the Town for verification of features shown. Revision and resubmittal may be needed to obtain the staff's verification of the as-built plan. Once verification has been affirmed, the subdivider shall submit:
 - 1. three copies of the final certified "as-built" plan prepared by a licensed professional engineer or licensed land surveyor registered in the state;
 - 2. a "read only" version of the as-built site plan in an electronic format approved by the Director of Public Works.
- (b) Following approval of the as-built plan, it shall control development on the property unless the plan is amended or replaced.
- (c) In addition to reflecting all specifications and features shown on the approved site plan, the certified "as-built" plan shall include the following:
 - 1. Pages corresponding with all pages in the approved plan set;
 - 2. Boundary of the site as shown on the approved site plan or final plat of record. The as-built plan shall show any geodetic reference points located on the site.

3. Locations of all storm sewer, sanitary sewer, fire hydrants and associated easements including all waterline easements. For storm and sanitary sewers, the pipe sizes, lengths, top and invert elevations and percent grade of pipes as computed shall also be shown.
4. Ponds, including detention, retention and Best Management Practice (BMP) ponds, showing elevations of tops of embankments, toes of embankments, weirs, spillways, drainage structures, access easements and capacities of such ponds. Capacities shall be shown both volumetrically and topographically with sufficient elevations to calculate the capacities.
5. Rain gardens, drainage swales and detention trenches.
6. Description of location and type of alien, invasive plant species removed from the site in accordance with Section 78-503(I)(1)(b).
7. Deed Book and page number(s) of the recordation in the land records of Fairfax County of dedications and easements reflected on the approved site plan.
8. All utility locations, except building and service connections, with the notation "from available records." The applicant shall obtain such plans and records from the appropriate utility companies.
9. A statement of certification by a licensed professional engineer or land surveyor registered in the State, certifying that the as-built plan conforms with the criteria listed above and represents actual conditions on the site for those items only, and bearing the engineer's or surveyor's seal, signature and Virginia registration number.

(15) Maintenance of Site Improvements

Following approval of the as-built site plan, it shall control the maintenance of site improvements unless the site plan is amended. All improvements shown on the site plan shall be maintained in a manner that protects the safety and convenience of persons using the site as well as surrounding property values. All required installation for stormwater management shall be maintained in working order by the property owner unless otherwise agreed by the Town in writing. All required landscaping, parking spaces and other features shall be adequately maintained in good condition.

~~(1) Applicability~~

~~The provisions of this Section shall apply to proposed temporary uses as set forth in Section 78-403, Temporary Uses or Structures. Temporary uses longer than 45 days in duration shall undergo Site Plan review as required for other development in the Town.~~

~~(2) Submittal Requirements~~

~~Applications for a temporary use of less than 45 days in duration shall include the following:~~

- ~~(a) Contact information for a party who has agreed to be responsible in the event that the temporary use is found to be in violation of this Ordinance, including phone number, street address, permanent residence, and adequate proof of the validity of the contact information provided;~~
- ~~(b) A letter signed by the owner or owner's agent consenting to the submittal of the application shall be submitted. If the letter included with the application is faxed or photocopied, the letter containing the original signature shall be submitted to the Town within five business days of application submittal.~~

- ~~(c) A sketch showing the area of proposed activity with signage, display areas, if any, and any proposed illumination. If possible, the sketch should be provided on a copy of a previously approved site plan.~~
- ~~(d) A written description of the proposed activity, including an analysis of any noise that may not comply with the noise provisions in the Herndon Town Code; and associated signage;~~
- ~~(e) Hours of operation for the proposed activity;~~
- ~~(f) The location, type, and size of proposed vehicular entrances to site;~~
- ~~(g) The location, layout, and surface material of the proposed parking area associated with the proposed activity;~~
- ~~(h) Any additional information the Zoning Administrator deems appropriate, including provisions in Section 78-201(C) Common Submittal Requirements.~~

(G) Signs**(1) Purpose**

The purpose of this Section is to establish the procedures and standards for Master Sign Plans, Master Sign Plan Conformance Permits, Sign Permits, and Administrative Sign Approvals. Additional sign regulations, including prohibited signs, are located in Section 78-508.

(2) Applicability

- (a)** Except for signs exempted from these requirements in Section 78-202 ~~(G)(H)~~(3), *Exemptions*, no sign shall be erected, repaired, altered, relocated, maintained, or displayed in the Town prior to approval of an Administrative Sign Approval, Sign Permit, Master Sign Plan, or both, approved in accordance with the standards in Section 78-508 of this Chapter. Nothing in this Chapter shall be construed to permit signs in public rights-of-way.
- (b)** Any non-residential development in which two or more individual establishments are located may request the approval of a Master Sign Plan for window and wall signs (all other signs within the development, unless exempted, must receive separate Sign Permit approval pursuant to Section 78-202 ~~(G)(H)~~(4), Sign Permit ~~and Master Sign Permit~~) or Administrative Sign Approval pursuant to Section 78-202 ~~(G)(H)~~(7)). A Master Sign Plan establishes a comprehensive sign (window and wall) plan for the development. It involves a two-step review procedure involving Sign Permit approval of the Master Plan itself and issuance of administratively approved Master Sign Plan Conformance Permits for individual signs allowed under the Master Sign Plan.
- (c)** No sign in the Town shall be erected, repaired, altered, relocated, maintained, or displayed prior to the approval of a Sign Permit or Master Sign Permit pursuant to Section 78-202 ~~(G)(H)~~(4), a Master Sign Plan Conformance Permit pursuant to Section 78-202(G)(5), or an Administrative Sign Approval pursuant to Section 78-202(G)(7), *Administrative Sign Approval*, whichever is applicable. The Architectural Review Board reviews applications for Sign Permits for all signs in the Town, except those located in the Heritage Preservation Overlay District. The Heritage Preservation Review Board reviews applications for Sign Permits for signs in the Heritage Preservation Overlay District as described in Section 78-200(E) and Section 78-202 ~~(H)(I)~~. The

(d) An Administrative Sign Approval in accordance with the standards in Section 78-202(G)(7)(c), *Standards*, shall be obtained prior to the erection, repair, alteration, relocation, refacing or display of those signs found in Section 78-508(J).

The following signs shall be exempted from the requirements of obtaining an Administrative Sign Approval, a Sign Permit, or a Master Sign Plan. The Zoning Administrator shall determine whether or not a particular sign falls within the categories below:

- (a)** The changing of message content on an approved sign for: a nonresidential use in a residential district, a religious institution in any zoning district, a marquee sign.
- (b)** Signs erected by the duly constituted governing body including, but not limited to, traffic control signs, signals, regulatory devices, legal announcements, historical markers and directional signs.
- (c)** National, state or local flags of other civic, charitable, educational or philanthropic groups which can in no way be construed as advertising and which are not otherwise prohibited by statute or ordinance.
- (d)** Signs with no neon components and no larger than two square feet in total area:

1. Posting or displaying address numbers of a property or structure; and
 2. Displayed for the direction or convenience of the public, including signs identifying restrooms, public telephones, freight entrance, or similar public services.
- (e) Signs, no larger than one square foot in total area, placed by public utilities, indicating the location of underground facilities.
- (f) Seasonal displays or decorations, not advertising a product, service or entertainment.
- (g) Freestanding signs or signs attached to fences at approximately eye level, no larger than two square feet in total area, warning the public against hunting, fishing, trespassing, dangerous animals, swimming or similar activities.
- (h) One contractor's sign per development during construction, no larger than 24 square feet in total area and with a maximum height of seven feet above grade.
- (i) One community sales sign per development or dwelling type during construction, no larger than 24 square feet in total area and a maximum height of seven feet above grade.
- (j) Real estate signs erected for less than 12 months for the purpose of advertising the sale or lease of the premises limited as follows:
1. For individual dwelling units, one sign with a total sign area no larger than four square feet.
 2. For multifamily developments, one freestanding sign, per street frontage, with a total sign area of 24 square feet and a combined height of the sign and the base no more than seven feet above grade.
 3. For businesses, one freestanding sign, per street frontage, with a total sign area of 24 square feet and a combined height of the sign and the base no more than 7 feet above grade.
- (k) Temporary window signs, with a combined square footage of no more than 20 percent of the window area and displayed for no more than 30 days.
- (l) Entrance and exit signs containing those words only and with a maximum sign area of one square foot.
- (m) One window sign for each place of business stating whether or not the business is open or closed to customers and meeting the following criteria:
1. The maximum sign area shall be no more than two square feet.
 2. The sign shall not be displayed more than 8 feet above grade.
 3. Message content shall be limited to the word "open" if the sign is internally illuminated, constructed of exposed internally illuminated tubing, LED lettering or similar illuminated material.
 4. Any associated voltage transformer shall be hidden from view.
- (n) Political campaign signs erected not more than 60 days prior to the election. Such signs shall be removed within seven days after the election. If after reasonable notice such signs are not so removed, the town may remove them and the candidate, organization or person who caused the sign to be erected may be charged for such removal.

- (o) Noncommercial signs not otherwise specifically covered by other provisions of this article provided that such a sign shall not exceed nine square feet in size; shall not be illuminated; shall not be erected closer than 15 feet from the closest public or private street edge of pavement or other street improvement surface; shall not be closer than five feet from a side lot line; shall not be erected taller than six feet above grade; shall be kept in good and safe condition or else removed by the owner of the premises on which the sign is located; and shall not affect traffic sight distance capabilities. The zoning administrator shall make determinations under this section using standards of this chapter and of the Town of Herndon Public Facilities Manual (1997), as amended and as may be amended from time to time. Noncommercial signs not covered by this article shall conform to all design and construction requirements and size limitations imposed by this chapter upon similarly situated signs. If more than one set of limitations apply, the sign must meet the more stringent standard. For the purpose of this section, the term "similarly situated signs" means signs that could, under this chapter, be erected by right upon property of the same zoning classification, use and size.

(4) Sign Permit and Master Sign Plan Permit

- (a) The procedures and requirements for submittal and review of an application are established in Section 78-201, *Review Procedures*. A completed and properly filed application for a sign permit shall be filed with the zoning administrator on forms furnished by the department of community development.
- (b) All applications for a Sign Permit or a Master Sign Plan Permit, shall include the items required in Section 78-201(C), ~~Common Submittal Requirements~~, as well as the following items. The sheets for a sign permit or master sign plan permit may be eight and one half inches by eleven inches or eight and one half inches by 14 inches, instead of 24 by 36 inches when appropriate.
1. Elevations drawings of the sign and structure;
 2. Samples of the proposed materials and colors;
 3. Sign description including exact text, type face, height of letters, logo, size of logo, number of lines of text, returns, background colors, logo colors, text colors, method of mounting, and sign material;
 4. Building frontage and expected frontage for the individual establishment to which the sign applies shall be shown;
 5. A plan showing the location(s), maximum height, dimensions and maximum area of all signs;
 6. A written description, with cut sheets, or drawings regarding proposed illumination (if any);
 7. A written description of the sign copy, size(s), and proposed illumination (if any); and
 8. A written description of how the proposed sign(s) comply with the provisions in this Chapter.
- (c) After preparation of the Staff Report and the scheduling of the hearing on the application, the Zoning Administrator shall transmit a copy of the application to the appropriate review board (the Architectural Review Board, unless the sign is to be located in the Heritage Preservation Overlay District; the Heritage Preservation Review Board if the sign is to

be located in the Heritage Preservation Overlay District). At the hearing on the application, the review board shall consider the application, the relevant support materials, the Staff Report, and any other testimony and evidence given at the hearing. After the close of the hearing for the subject application, the review board shall approve, defer with the applicant's permission, or disapprove the application based on whether or not the application meets applicable standards and regulations in this Chapter, the Herndon Town Code, and other applicable local, state or federal laws.

(d) A Sign Permit or Master Sign Plan Permit may be approved upon a finding the applicant demonstrates the application complies with all relevant standards of Section 78-508, *Signs*, and the relevant provisions of the Heritage Preservation Handbook, if located within the Heritage Preservation Overlay District.

(e) Wherever the use of a building or premises by a specified business or occupation is discontinued for that business or occupation, signs pertaining to that business or occupation, which were previously erected or displayed on that building, or as a freestanding sign, are deemed to be accessory to that use and therefore shall be removed within a period of 60 days following the vacation of the premises and cessation of that business or occupation on that site. It shall be the responsibility of the owner of the building or the premises to accomplish such removal in order to avoid misleading the public and to eliminate the possibility of abandoned structures falling into disrepair and thereby becoming a hazard. If, after written notice from the zoning administrator to the owner of the premises, such signs are not removed within ten days of such notice, the zoning administrator may cause such removal and charge the cost to the owner of the premises. Any charge so levied shall be collected as a tax and any such charge having been assessed and which remains unpaid shall constitute a lien against the property as provided in Code of Virginia, title 15.2.

(f) Unless specified otherwise by the review board, the sign for which the approval was granted shall be erected, repaired, altered, relocated, maintained or displayed within 1 year from the date of approval, or the Sign Permit shall be void.

(g) Upon written application submitted to the Zoning Administrator at least 30 days prior to the expiration of the permit period by the applicant, and upon a showing of good cause, the review board may grant an extension not to exceed 6 months. The approval shall be deemed extended until the review board acts upon the request for extension. Failure to submit an application for an extension within the time limits established by this Section shall render the Sign Permit void.

(h) A Sign Permit may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

(5) Master Sign Plan Conformance Permit

To ensure window and wall signs erected by an individual establishment in a development subject to a Master Sign Plan conform to the approved Master Sign Plan, each individual establishment shall have a Master Sign Plan Conformance Permit approved pursuant to the requirements of this Section prior to the erection or construction of any window or wall signs.

The procedures and requirements for submittal and review of an application are established in Section 78-201, *Review Procedures*. In addition to the

requirements and procedures of Section 78-202(G)(H) (4) all applications for a Master Sign Plan Conformance Permit shall include a written description indicating how the proposed sign(s) complies with the approved Master Sign Plan and indication of the building owner's support of the application.

- (a) The Zoning Administrator shall review the application pursuant to the requirements of Section ~~78-201(T)~~, 78-201(S) ~~Zoning Administrator Review Procedures Process for Applications Not Requiring a Public Hearing~~. A Master Sign Plan Conformance Permit shall be approved upon a finding that the applicant has demonstrated compliance with the approved Master Sign Plan Permit and all pertinent requirements of Section 78-508 and that any nonconforming signs for the establishment have been abated.
- (b) Issuance of a Master Sign Plan Conformance Permit shall authorize only the installation of the specific window and wall sign(s) approved in the permit.
- (c) Appeals from decisions of the Zoning Administrator on a Master Sign Conformance Permit may be taken to the Architectural Review Board if the subject property is located outside the Heritage Preservation Overlay District or otherwise, to the Heritage Preservation Review Board.
- (d) Unless specified otherwise by the Zoning Administrator, installation of the sign(s) permitted under the permit approval shall be completed within 1 year from the date of approval, or the Master Sign Plan Conformance Permit shall expire and be void.
- (e) Upon written application submitted at least 30 days prior to the expiration of the permit period by the applicant and upon a showing of good cause, the Zoning Administrator may grant one extension not to exceed 6 months. The approval shall be deemed extended until the Zoning Administrator has acted upon the request for extension. Failure to submit an application for an extension within the time established by this Section shall render the Master Sign Conformance Permit void.
- (f) A Master Sign Conformance Permit may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

(6) Modification from Master Sign Plan for Individual Establishment

- (a) To provide flexibility in the administration of an approved Master Sign Plan, either the applicant or the owner of an individual establishment may request the review board which approved the Master Sign Plan to modify the Master Sign Plan requirements for the individual establishment. The procedures and requirements for submittal and review of an application are the same as for a standard Sign Permit, as found in Section 78-202(G)(H)(4) *Sign Permit and Master Sign Plan Permit*. In addition to the submittal requirements of Section 78-202(G)(H)(4) the applicant shall submit a written description of how the proposed sign(s) differ from the approved Master Sign Plan, as well as how the proposed signage will comply with the provisions in this Chapter.
- (b) A request to modify the requirements of a Master Sign Plan for an individual establishment may be approved upon a finding the modification, as proposed,
 - 1. will result in design quality equal to or greater than that established in the Master Sign Plan through the proposed combination of colors, materials, aesthetic balance and

- composition, height and width, area, placement, and typeface, or use of any symbols, designs, and logos; and will not detract from or be detrimental to the appearance of the development and its signs approved under the Master Sign Plan.

(7) Administrative Sign Approval

The procedures and requirements for submittal and review of an application are established in Sections 78-201(A-F), *Review Procedures*.

- (a) All applications for a Sign Permit shall include all the items required in Section 78-201(C), ~~Common~~ *Submittal Requirements*, as well as the following:
1. A plan showing proposed location(s) and dimensions of all signs;
 2. Sign description including exact text, type face, height of letters, logo, size of logo, number of lines of text, background colors, logo colors, text colors, method of mounting, method of illumination and sign material;
 3. A description of the line of sight and location of the sign on the site; and
 4. Dates and number of days of display.
- (b) The Zoning Administrator shall review the application pursuant to the requirements of Section 78-201(S), ~~Zoning Administrator Review~~ *Procedures-Process for Applications Not Requiring a Public Hearing*.
- (c) Administrative Sign Approval shall be granted upon a finding the applicant demonstrates the sign complies with the standards of Section 78-508, *Signs*. The Administrative Sign Approval shall state the duration of the permit.

(8) Inspection

Any sign for which a sign permit, master sign conformance permit or an administrative sign permit has been approved shall be subject to inspection by the Zoning Administrator. If the sign fails to pass the required inspection, the applicant shall correct the items not in compliance within 30 days or the Sign Permit, Master Sign Plan Conformance Permit, or Administrative Sign Approval shall be deemed invalid and void and the sign shall be removed.

(H) Certificate of Appropriateness in the Heritage Preservation Overlay District

The purpose of this Section is to establish the procedures and standards for the review of Certificates of Appropriateness in the Heritage Preservation Overlay District.

(1) Applicability

Unless exempted pursuant to Section 78-202(~~H~~)(2), *Exemptions*, a Certificate of Appropriateness must be approved prior to:

- (a) Erecting, reconstructing, altering, or restoring any building or structure in the Heritage Preservation Overlay District; or
- (b) Demolishing, or moving any historic landmark, building, or structure located in the Heritage Preservation District.
- (c) Signs in the Heritage Preservation Overlay District are reviewed pursuant to the applicable procedures in Section 78-202(~~G~~)(~~H~~), *Signs*.

(2) Exemptions

The following minor development, which has been determined not to have permanent effects on the character of the Heritage Preservation District, is exempted from the requirements of this Section. In the event the scope or nature of the development changes during the improvement process, the Zoning Administrator shall have the authority to order all work to be stopped and that an appropriate application for a certificate of appropriateness be filed.

- (a) Additions or deletions of storm doors, storm windows, window boxes, or similar appurtenances, or portable air conditioners in windows.
- (b) In locations not visible from a public street, an addition or deletion of television or radio antennas, skylights or solar collectors.
- (c) Landscaping, grading, walks, swimming pools and related mechanical equipment, retaining walls of less than 12 inches in height, or temporary fencing in place for 1 year or less, when it does not significantly affect the character of the Heritage Preservation Overlay District or an historic landmark and its surroundings.
- (d) Minor additions or deletions to an existing building or structure that is not visible from a public street and do not significantly change the architectural character of the building or structure.
- (e) Alterations that do not affect the exterior appearance of a site, building, or structure (repainting to a different color or painting unpainted surfaces affects the exterior appearance of the building or structure).
- (f) In cemeteries, memorialization on community and private mausoleums, columbaria, family estates, individual and family sites, and memorialization such as headstones and monuments, cremation benches, crypts, vase units, vesper lights, trees, shrubs, flowers, borders (including brick or ornamental fences) and the like, and the words, figures, and graphics on existing or future buildings or structures. Creation of new buildings or structures (not described in the previous sentence), new community burial units, new cenotaphs, new ossuaries, and similar development are not exempt.
- (g) Similar development determined by the Zoning Administrator not to have permanent effects on the character of the HPD.

(3) Relationship of Certificate of Appropriateness to Site Plan

- (a) An application for a Certificate of Appropriateness in the Heritage Preservation Overlay District for a development that requires site plan or single lot development plan approval pursuant to Section 78-202(F), Site Plan, shall not be reviewed formally by the Heritage Preservation Review Board (HPRB) until the site plan or single lot development plan is approved. However, applicants may meet informally with the HPRB prior to site plan approval.
- (b) In instances where development requires site plan or single lot development plan approval (Section 78-202(F)), upon recommendation of the Zoning Administrator or the Town Council, an applicant may present the substance of the plan for development for which a Certificate of Appropriateness is required at a work session of the HPRB prior or concurrent with the review of the site plan or single lot development plan.

(4) Procedure

- (a) Prior to submitting an application for a Certificate of Appropriateness, applicants are encouraged to seek advice from the HPRB during one or

Certificates of
Appropriateness

Submit
Application

Staff
Review

Schedule
Hearing

Schedule
Public
Notification

Staff
Report

HPRB Public Hearing/
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more work sessions. At the work session, the HPRB will review the proposed plan for development and provide the applicant comments about its general conformance with the requirements for a Certificate of Appropriateness. The comments are advisory and do not confer development rights on the applicant or bind the HPRB, Town staff, or any other entity of the Town providing comments.

(b) The procedures and requirements for submittal and review of an application, scheduling the public hearing and public notification are established in Section 78-201, *Review Procedures*.

(c) All applications for a Certificate of Appropriateness shall include the items required in Section 78-201(C), ~~Common~~ *Submittal Requirements*, as well as the following:

1. Architectural drawings or renderings drawn to scale (for new construction, rehabilitation or building alterations);
2. Site plan drawn to scale (including landscaping);
3. Samples of materials and colors to be used;
4. Written statements concerning the following:
 - a. Construction methods to be employed;
 - b. A description of proposed materials;
 - c. Any proposed signs, with appropriate details;
 - d. Any proposed exterior lighting arrangements;
 - e. Elevations of all portions of structures and their relationships to public view;
 - f. Design of doors and windows;
 - g. The colors to be utilized and their relationships to adjacent structures;
 - h. All other exhibits and reports deemed necessary by the board for a full review of the application; and
 - i. If an application for demolition is submitted for a building or structure and is defined as a contributing building in the heritage preservation district, the interior and exterior of the building must be thoroughly documented with black and white photographs and measured drawings including floor plans and elevations following the standards of the *Historic American Buildings Survey*.

(d) After public notification and the scheduling of a public hearing, the HPRB shall conduct a public hearing on the application. At the public hearing, the HPRB shall consider the application, the relevant support materials, the Staff Report, and the public testimony and evidence given at the hearing. After the close of the public hearing, the HRPB shall either approve or disapprove the application based on the standards in Section 78-514, *Development within the Heritage Preservation Overlay District*.

(e) If the HRPB finds the application complies with the standards in Section 78-514, *Development within the Heritage Preservation Overlay District* and the applicable guidelines found in the Herndon Heritage Preservation Handbook, the HRPB shall approve a Certificate of Appropriateness.

(f) If the HRPB determines the application fails to comply with the standards in Section 78-514, *Development within the Heritage Preservation Overlay District*, and the applicable guidelines found in the Herndon Heritage Preservation Handbook, it may either disapprove the application or continue the public hearing. In either case, it shall explain why the application fails to comply with the review standards. It shall

recommend revisions to the plans and specifications that would bring the application into conformance with Section 78-514, *Development within the Heritage Preservation Overlay District*, and the applicable guidelines found in the Herndon Heritage Preservation Handbook. The applicant may request or agree to a continuation of the public hearing in accordance with Section 78-201(J) *Deferral of Application* and 78-201(M)(2) *Continuation of Public Hearing*.

- (g) At its discretion, the HPRB may adopt a Certificate of Appropriateness providing design guidance for certain minor improvements such as changes in color of materials or fences, dumpster enclosures, and similar screening. The staff may review applications for eligible minor improvements addressed in the Certificate of Appropriateness for compliance with the Certificate of Appropriateness. The staff shall then notify the applicant in writing whether or not the application successfully complies with the Certificate of Appropriateness and the improvements shall be authorized under that Certificate of Appropriateness, without a public hearing before the HPRB.

(5) **Standards**

Development located within a preservation district shall be completed in accordance with the *Herndon Heritage Preservation Handbook* and the standards set forth in Section 78-514, *Development within the Heritage Preservation Overlay District*.

(6) **Appeals**

- (a) The applicant or any person aggrieved by the decision with a property interest in land abutting or across the street from property which is the subject of a final decision of the HPRB on a Certificate of Appropriateness, may appeal the decision to the Town Council:
1. An appeal shall be initiated by filing a written Notice of Appeal with the Zoning Administrator specifying the grounds for the appeal within 14 days of the final decision of the HPRB.
 2. No action shall be taken until 15 days after the final decision of the HPRB on a Certificate of Appropriateness. If a written Notice of Appeal on a Certificate of Appropriateness is initiated pursuant to this Section, any related Certificate of Appropriateness issued by the HPRB shall be rendered void.
 3. The Zoning Administrator shall schedule a hearing on the matter at the earliest feasible Town Council meeting by which time notice can be provided consistent with the requirements of Section 78-201(I), *Public Notification*.
 4. At the hearing on the appeal, the appellant or the appellant's agent shall state the grounds for the appeal and identify any materials or evidence from the record to support the appeal. Town staff shall be given an opportunity to respond, as shall any other person(s) the Council deems necessary and appropriate. After the conclusion of the hearing, the Town Council may affirm, modify, or reverse the decision of the HPRB, in whole or in part, or may remand the case to the HPRB. The decision shall be based on the standards in Section 78-202(H)(5), *Standards*.

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5. A decision shall not be reversed or modified unless there is evidence in the record that the decision of the HPRB is not correct, based on the review standards for a Certificate of Appropriateness.
6. In determining whether or not to remand a case to the HPRB, the Town Council shall be guided by the following factors: the completeness of the record; the appropriateness of further review by the HPRB of certain points or facts; and any amendments to the application after the decision of the HPRB. Town Council recognizes that revisions to an application for the purpose of clarifying issues, or addressing concerns raised during the public hearing are positive and will not necessarily result in a remand, except that significant and substantive revisions to the application may serve as a basis for remand.

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- (b) Any person jointly or severally aggrieved by a final decision of the Town Council pursuant to this Section, or any taxpayer or any officer, department, board, or the Town, may appeal the decision to the Circuit Court of Fairfax County pursuant to Section 15.2-2306, Code of Virginia. If appealed, a petition at law shall be filed setting forth the alleged illegality of the action by the Town Council, provided that such petition shall be filed within 30 days after the final decision is rendered by the Town Council.

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(7) Submittal of New Application After Disapproval

If the HPRB disapproves a Certificate of Appropriateness, the applicant may, at any time, submit a new application with new information addressing the written reasons for disapproval.

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(8) Transfer

A Certificate of Appropriateness shall be transferable to subsequent owners of the property for which the certificate is issued.

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(9) Expiration

Development activity or demolition approved pursuant to a Certificate of Appropriateness must begin within 1 year of the issuance of the certificate. Failure to begin the activity within 1 year shall render the Certificate of Appropriateness void.

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Upon written application submitted to the Zoning Administrator by the applicant at least 60 days prior to the expiration of the certificate, the HRPB shall consider and may grant one extension not to exceed 1 year upon a showing of good cause. In determining good cause, the HPRB shall take into consideration the scope of the proposed work and the laws, ordinances, and regulations in effect at the time of the request for extension. The approval shall be deemed extended until the HRPB has acted upon the request. Failure to submit an application for an extension within the time limits established by this Section shall render the Certificate of Appropriateness void.

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(10) Amendment

A Certificate of Appropriateness may be amended, extended, or modified in accordance with the procedures and standards established for its original approval.

(11) Demolition, Relocation and Alteration of Property Without a Certificate of Appropriateness

As provided in the Code of Virginia Section 15.2-2306, in addition to the right of appeal outlined in this section, the owner of any building or structure shall be permitted to demolish, alter or relocate a building, structure or historic landmark in the Heritage Preservation Overlay District provided that:

- (a)** Application is made by the owner to the Town Council for the right to demolish the building or structure, or the right to alter, or the right to relocate a building or structure;
- (b)** The owner demonstrates that for a period of time set forth in the schedule in Section 78-202(H)(11)(c) and at a price reasonably related to its fair market value, the owner has made a bona fide offer to sell the historic landmark, building or structure, and the land pertaining thereto, to the Town or Fairfax County, or to any person, firm, corporation, government, agency or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the historic landmark, building or structure and the land pertaining thereto. Evidence of a bona fide offer to sell must be demonstrated by a listing through a multiple listing service for the period of time established in Section 78-202(H)(11)(c), at a price reasonably related to the fair market value of the property.
- (c)** The schedule for offers to sell shall be as follows:
 - 1. Three months when the offering price is less than \$25,000.00;
 - 2. Four months when the offering price is \$25,000.00 or more but less than \$40,000.00;
 - 3. Five months when the offering price is \$40,000.00 or more but less than \$55,000.00;
 - 4. Six months when the offering price is \$55,000.00 or more but less than \$75,000.00;
 - 5. Seven months when the offering price is \$75,000.00 or more but less than \$90,000.00; and
 - 6. Twelve months when the offering price is \$90,000.00 or more.
- (d)** No bona fide contract binding upon all parties involved shall have been executed for the sale for any such historic landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable period set forth in the schedule in Section 78-202(H)(11)(c).

(12) Appeal Not Affected

Any appeal which may be taken to the circuit court of Fairfax County from the decision of the Town Council, whether instituted by the owner or by any other proper party, notwithstanding the provisions of this Section relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to in this Section. No offer to sell shall be made more than 1 year after a final decision by the Town Council, but thereafter the owner may renew the request to the Town Council to approve the demolition of the historic landmark, building, or structure.

(I) Zoning Inspection Permit
(1) Applicability

A Zoning Inspection Permit (ZIP) is required prior to occupancy or operation of the following developments and uses:

- 1 (a) Home-based businesses;
2 (b) Bed and breakfast establishments, in accordance with the conditions of
3 Section 78-402(G)(4)(g), *Permits and Inspections*. ~~Accessory financial~~
4 ~~institution uses that involve a scope limited to pay day loans, wire transfers,~~
5 ~~check-cashing and similar transactions.~~
6 (c) Temporary uses for which a temporary use permit is required.
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8 (2) **Procedure**
9 (a) Application for a ZIP shall be made to the Zoning Administrator on forms
10 provided by the Zoning Administrator
11 (b) An application for a ZIP shall not be approved until the Building Official has
12 issued an Occupancy Permit for the subject use, if a building permit is
13 required.
14 (c) All applications for a ZIP shall include the applicable items required in
15 Section 78-201(C), *Submittal Requirements*.
16 (d) After the application is accepted by the Town, the Zoning Administrator shall
17 review the application, inspect the subject property and take action on the
18 application.
19 (e) A ZIP may be approved upon a finding that the development that is the
20 subject of the application complies with applicable standards of this Chapter.
21
22 (J) **Zoning Appropriateness Permit**
23 (1) **Applicability**
24 To ensure the proposed use of structures, buildings, and land complies with the
25 standards of this Chapter, a Zoning Appropriateness Permit (ZAP) is required

26 (a) Prior to issuance of a business license for each individual establishment
27 that is a ~~any~~ new, renamed, or relocated non-residential use within the
28 Town, excluding any home-based business and multi-family
29 development;
30 (b) Prior to installation of an accessory food preparation area in any
31 residential structure.
32 (2) **Procedure**
33 (a) Application for a ZAP ~~ZIP~~ shall be made to the Zoning Administrator on
34 forms provided by the Zoning Administrator.
35 (b) Where an applicant for a ZAP~~ZIP~~ is engaged in 2 or more businesses,
36 trades, or occupations at the same location, each business, profession,
37 trade, or occupation shall be listed on the ~~treated as an~~ application for
38 the a separate ZAP~~ZIP~~ .
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40 (c) All applications for a Zoning Appropriateness Permit shall include the
41 applicable items required in Section 78-201(C), ~~Common~~ *Submittal*
42 *Requirements*.
43 (d) After the application is accepted by the Town, the Zoning Administrator
44 shall review and take action on the application. Inspection of the subject
45 property by the Zoning Administrator is not required for a Zoning
46 Appropriateness Permit, but may occur if deemed appropriate by the
47 Zoning Administrator.
48 (e) A Zoning Appropriateness Permit may be approved upon a finding the
49 proposed use of the structure, building, and land is allowed in the
50 applicable zoning district and meets applicable requirements and
51 standards in this Chapter and the Herndon Town Code.
52
53 (3) **Expiration**

A Zoning Appropriateness Permit shall expire at the end of 6 months after the date of its initial approval if business license or business license relocation has not been approved, or the establishment has not opened to the public. Upon written request, the Zoning Administrator may grant one 6-month extension of the Zoning Appropriateness Permit for good cause shown.

(4) Amendment

A Zoning Appropriateness Permit may be amended, extended, or modified in accordance with the procedures and standards established for its original approval.

(K) Determinations

(1) Authority

Determinations about interpreting this Chapter shall be made on application, in writing by the Zoning Administrator, including determinations about interpreting: the text of this Chapter; the location of zoning district boundaries; whether or not an unspecified use falls within a use category or use type allowed in a zoning district; and previously approved special exceptions, site plans, single lot development plan, variances, or proffers associated with an amendment to the Zoning Map.

(2) Initiation

A written determination may be requested by the Town Council, the Planning Commission, any resident or landowner, or any person having a contractual interest in land in the Town.

(3) Procedure

(a) Before a written determination shall be provided by the Zoning Administrator, a Request for Determination shall be submitted in writing to the Zoning Administrator in writing along with the applicable items required in Section 78-201(C), ~~Common~~ *Submittal Requirements*.

(b) After a Request for Determination has been submitted, the Zoning Administrator shall determine whether or not it is sufficient.

1. If the Zoning Administrator determines the request is not sufficient, a notice shall be provided to the applicant specifying the deficiencies. The Zoning Administrator shall take no further action on the Request for Determination until the deficiencies are remedied. If the applicant fails to respond to the deficiencies within 30 days of the Zoning Administrator's notice, the Request for Determination shall be considered withdrawn.
2. When the Request for Determination is determined sufficient, the Zoning Administrator shall review the request and render a determination pursuant to this Section.

(c) After the Request for Determination has been determined sufficient, the Zoning Administrator shall review the request and render a determination, based on the following standards:

1. When the request is for a determination about the location of zoning district boundaries on the Official Zoning Map, the Zoning Administrator shall apply the following standards:
 - a. Unless otherwise specified, zoning district boundary lines are lot lines or the centerlines of streets, alleys, or

- 1 W. & O.D. right-of-way, or such lines, fixed by
2 dimensions, or otherwise clearly shown or designated.
- 3 b. Where district boundaries are indicated as
4 approximately following or being at right angles to the
5 centerlines of streets, highways, alleys, or W. & O.D.
6 alignment, and those centerlines shall be construed to
7 be the boundaries. Any significant relocation of a
8 centerline shall result in a shift of the boundary.
- 9 c. Where a district boundary follows a river, creek, or
10 branch, or other body of water, the boundary shall be
11 construed to follow the centerline at low water, or at the
12 limit of the jurisdiction, and in the event of change in the
13 shoreline, the boundary shall be construed as moving
14 with the actual shoreline.
- 15 d. If no distance, angle, curvature, description, or other
16 means is given to determine a boundary line accurately
17 and the provisions of this Section do not apply, the
18 boundary line shall be determined by the Zoning
19 Administrator by using the scale shown on the Official
20 Zoning Map.
- 21 2. When the request is for a determination about whether or
22 not an unspecified use falls within a use classification, use
23 category, or use type allowed in a zoning district, the
24 Zoning Administrator shall apply the standards of Section
25 78-400(A) in making the determination.
- 26 3. For other determinations, the Zoning Administrator shall
27 evaluate the request in light of the Comprehensive Plan,
28 this Chapter, the Official Zoning Map, other relevant
29 codes and statutes, and any previously approved permits
30 (if applicable).
- 31 4. When making determinations, the Zoning Administrator
32 shall consult with the Town Attorney and other affected
33 Town staff before rendering the determination.
- 34 (d) The zoning administrator shall respond within ninety days of a request
35 for a decision or determination on zoning matters within the scope of the
36 zoning administrator's authority unless the requester has agreed to a
37 longer period.
- 38 (e) The determination shall be in writing, approved as to form by the Town
39 Attorney, and sent to the applicant and property owners adjacent to the
40 subject property by mail after the Zoning Administrator has made the
41 determination.
- 42 (f) In addition, the determination shall be posted on the Town's web site
43 and published in a newspaper of general circulation in the Town. The
44 published determination shall
- 45
- 46 1. Identify the application or application number, and the
47 name of the applicant or the applicant's agent.
- 48 2. Indicate the date of the determination.
- 49 3. Describe the land involved by its complete street address
50 and by county tax map reference number, nearest cross
51 street, and land area.
- 52 4. Identify the current zoning district designation of the land
53 subject to the application.
- 54 5. Describe the nature of the applicant's request.

6. Describe in which department the public may inspect the request, the Zoning Administrator's decision, and related materials, and state that these materials are available for public inspection during normal business hours.
7. Include a statement that aggrieved parties may file an appeal pursuant to Section 78-202(L)(M) and provide the time frame in which an appeal may be filed.

(4) Official Record

The Zoning Administrator shall maintain a record of written determinations that shall be available for public inspection in the office of the Zoning Administrator, upon reasonable request, during normal business hours.

(L) Appeals from Certain Decisions and Determinations by the Zoning Administrator**(1) Appeal**

Any person aggrieved by a written determination from the Zoning Administrator including determinations about interpreting: the text of this Chapter; the location of zoning district boundaries; whether or not an unspecified use falls within a use category or use type allowed in a zoning district; and approved special exceptions, site plans, single lot development plans or variances may appeal the determination to the Board of Zoning Appeals pursuant to this section.

(2) Procedure

- (a)** An appeal of a decision by the Zoning Administrator must be initiated by filing a written Notice of Appeal, along with a fee established pursuant to Section 78-201(B)(3), Establishment of Application Requirements, Schedule, and Fees, within 30 days of the date the decision is provided pursuant to Section 78-201(N), *Notification of Decision*.
- (b)** The written Notice of Appeal shall include a statement of the error or improper decision or determination, the date of that decision, the grounds for the appeal, and related support materials.
- (c)** Upon receiving the written Notice of Appeal, the Zoning Administrator shall transmit it and papers, documents and other materials relating to the decision or determination that is being appealed, to the Board of Zoning Appeals. This material shall constitute the record on the appeal.
- (d)** The Zoning Administrator shall schedule a hearing on the matter at the earliest feasible Board of Zoning Appeals meeting by which time notice can be provided consistent with the requirements of Section 78-201(I)(2), *Written (Mailed) Notice*. The hearing shall be scheduled and notice provided so the Board can make a decision on the appeal within 90 days of the date of the filing of the written Notice of Appeal.
- (e)** At the hearing on the appeal, the Zoning Administrator shall present the staff report on the appeal. The appellant or the appellant's agent shall state the grounds for the appeal and identify any materials or evidence from the record to support the appeal. The Zoning Administrator shall be given an opportunity to respond, as shall any other person(s) the Board deems necessary and appropriate. After the conclusion of the hearing, the Board of Zoning Appeals shall affirm, partly affirm, modify, reverse, or partly reverse the decision or determination, based on the standards in Section 78-202(L)(3), *Standards*. The concurring vote of a majority of the membership of the members of the Board of Zoning Appeals shall be necessary to reverse any decision on appeal. The decision shall be made on the appeal within 90 days of the date of the filing of the written Notice of Appeal.

(3) Standards

A decision or determination by the Zoning Administrator shall not be reversed or modified unless there is evidence in the record that the decision or determination is not correct, based on the relevant procedures and review standards in this Chapter. The Board or Council shall consider the purpose and intent of any applicable provisions of this Chapter and other relevant ordinances, laws, and regulations in making its decision.

(4) Stay

An appeal shall stay all administrative proceedings by the Town in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Zoning Appeals that by reason of facts stated in the certificate a stay would cause imminent peril to life or property, in which case the administrative proceedings shall not be stayed unless a restraining order is granted by the Board of Zoning Appeals or a court of law, on application and notice to the Zoning Administrator and for good cause shown.

(M) Petition to the Town Council about Decisions and Determinations by the Zoning Administrator Concerning Proffered Amendments to the Zoning Map

(1) Petition

In accordance with Section 15.2-2301 of the Code of Virginia, any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator made regarding a proffered amendment to the zoning map may petition the Town Council for review of the decision of the zoning administrator. Petitions for review shall be filed with the zoning administrator and with the Town Clerk within ~~30~~ ~~thirty~~ days from the date of the decision for which review is sought and shall specify the grounds upon which the petitioner is aggrieved.

(2) Procedure

- (a)** A petition to the Town Council on a decision by the Zoning Administrator must be initiated by filing a written Notice of Appeal, along with a fee established pursuant to Section 78-201(B)(3), Establishment of Application Requirements, Schedule, and Fees, within 30 days of the date the decision is provided pursuant to Section 78-201(N), *Notification of Decision*.
- (b)** The written Notice of Appeal shall include a statement of the error or improper decision or determination, the date of that decision, the grounds for the appeal, and related support materials.
- (c)** Upon receiving the written Notice of Appeal, the Zoning Administrator shall transmit it and papers, documents and other materials relating to the decision or determination that is being appealed to the Town Council if the appeal pertains to a proffered zoning map amendment. This material shall constitute the record on the appeal.
- (d)** The Zoning Administrator shall schedule a public hearing on the matter at the earliest feasible Town Council meeting by which time notice can be provided consistent with the requirements of Section 78-201(I)(2), *Written (Mailed) Notice*. The hearing shall be scheduled and notice provided so the Council can make a decision on the appeal within 90 days of the date of the filing of the written Notice of Appeal.
- (e)** At the hearing on the appeal, the appellant or the appellant's agent shall state the grounds for the appeal and identify any materials or evidence from the record to support the appeal. The Zoning Administrator shall

be given an opportunity to respond, as shall any other person(s) the Council deems necessary and appropriate. After the conclusion of the hearing, the Town Council shall affirm, partly affirm, modify, reverse, or partly reverse the decision or determination, based on the standards in Section 78-202(M)(L)(3), *Standards*, and based on a majority vote. The decision shall be made on the appeal within 90 days of the date of the filing of the written Notice of Appeal.

(3) Standards

A decision or determination by the Zoning Administrator regarding a proffered zoning map amendment shall not be reversed or modified unless there is evidence in the record that the decision or determination is not correct, based on the relevant procedures and review standards in this Chapter. The Council shall consider the purpose and intent of any applicable provisions of this Chapter and other relevant ordinances, laws, and regulations in making its decision.

(4) Stay

An appeal shall stay all administrative proceedings by the Town in furtherance of the action appealed from. If the Zoning Administrator certifies to the Town Council that by reason of facts a stay would cause imminent peril to life or property the administrative proceedings shall not be stayed.

(N) Condominium and Cooperative Conversions

- (1)** Any existing structure and its related lot may be converted to a condominium or cooperative in accordance with this subsection. Review of condominium and cooperative conversions shall be conducted for the purpose of ascertaining the conformance of associated plats and plans to the zoning ordinance and the subdivision ordinance, where applicable. In lieu of conformance with the applicable condominium conversion provisions of the Town's public facilities manual, the regulations of this subsection 78-202(N), *Condominium and Cooperative Conversions* shall apply.
- (2)** Prior to conversion, proposed condominium and cooperative conversions which are nonconforming shall be subject to the approval of a special exception in accordance with the provisions of section 78-202(C)(5)(d) *Special Review Standards for Condominium Conversions of Nonconforming Properties*
- (3)** Copies of plats and plans shall be reviewed by the Zoning Administrator as a preliminary plat and the review shall assess the conformance of the proposal to the requirements of the zoning ordinance, the requirements of the subdivision ordinance, and any other applicable regulations, ordinances or laws. Accordingly, the declarant of a condominium conversion shall file with the Zoning Administrator:

 - (a)** one copy of all the information required by the Virginia Real Estate Commission pursuant to Virginia Code Section 55-79.89, as amended,
 - (b)** a copy of the formal notice required by Virginia Code Section 55-79.94, as amended. This filing shall be simultaneous with the filing required by the Commission.
 - (c)** Two copies of any plats and plans submitted to the Virginia Real Estate Commission under the provisions of Virginia Code Section 55-79.58, as amended, for review by the Zoning Administrator as a preliminary plat.
- (4)** For additional provisions regarding residential units, see Section 78-301(C)(3), *Residential Condominiums, Condominium and Cooperative Conversions*.

78-203 Enforcement and Remedies

(A) Purpose

This Section establishes procedures through which the Town seeks to ensure compliance with the provisions of this Chapter and obtain corrections for Chapter violations. It also sets forth the remedies and penalties that apply to violations of this Chapter. The provisions of this Section are intended to encourage the voluntary correction of violations, where possible.

(B) Compliance Required

(1) Generally

Compliance with all provisions of this Chapter is required. It shall be unlawful for any person to construct, reconstruct, alter, demolish, change the use of, or occupy any land, building, or other structure within the Town in violation of this Chapter.

(2) Permits

All persons, firms, and corporations shall obtain all permits required by the Town prior to commencing any use or building within the Town.

(C) Violations

(1) Violations Generally

- (a)** Any failure to comply with a requirement, standard, prohibition, or limitation imposed by this Chapter, or the terms or conditions of any permit or other development approval or authorization granted pursuant to this Chapter, shall constitute a violation of this Chapter.
- (b)** Permits issued on the basis of plans and applications approved by the Town Council, Planning Commission, Board of Zoning Appeals, Heritage Preservation Review Board, Zoning Administrator, or other officials or agencies where additional approval is required, authorize the use, arrangement, alteration, location, and construction set forth in such permits and development approvals, and no other use, arrangement, alteration, location, or construction.
- (c)** Development, use, arrangement, location, or construction at variance with that authorized shall be deemed violations of this Chapter, punishable as provided in this Section.

(2) Specific Violations

In addition to the offenses listed in Table 78-203.G, *Summary of Civil Violations*, It shall be a violation of this Chapter to do any of the following:

- (a)** Construct, reconstruct, alter, demolish, change the use of or occupy any building, structure, or sign, or to engage in development or subdivision of any land in contravention of this Chapter, including the conditions and terms of required permits and development approvals.
- (b)** Excavate, grade, cut, clear, or undertake any other land disturbing activity contrary to the requirements of this Chapter or without first obtaining all approvals required by this Chapter or other applicable regulations.
- (c)** Create, expand, replace, or change any nonconformity except in compliance with this Chapter.
- (d)** Reduce or diminish the lot area, setbacks, buffers, or open space below the minimum required by this Chapter.

- (e) Increase the intensity or density of use of any land or structure except in accordance with the requirements of this Chapter.
- (f) Construct, reconstruct, alter, demolish, change the use of or occupy any land, building, or other structure without first obtaining the appropriate permit or permit approval, or without complying with the terms and conditions of the permit or approval required to engage in such activity.
- (g) Fail to comply with any terms, conditions, or limitations placed by the Town Council, Planning Commission, Board of Zoning Appeals, Heritage Preservation Review Board, or Zoning Administrator upon any development approval, including designation of a Planned Development (PD) zoning district classification and Preliminary PD Plan, Special Exception, Variance, Administrative Adjustment, Certificate of Appropriateness, Sign Permit, Temporary Use Permit, Zoning Inspection Permit, Zoning Appropriateness Permit, Site Plan, Single Lot Development Plan, Building Location Plan, Final PD Plan, Final Plat for Minor Subdivision, Preliminary Plat for Subdivision, Final Plat for Subdivision, Site Grading Permit, Excavation Permit, Street Name or Name Change, or other form of authorization.
- (h) Fail to remove any sign installed, created, erected, or maintained in violation of this Chapter, or for which the sign permit has lapsed.
- (i) Fail to comply with a Certificate of Appropriateness, which shall include the discontinuance of work or lack of progress toward achieving compliance with a Certificate of Appropriateness for a period of 6 months.
- (j) Establish any unauthorized dwelling units as described in Section 78-401(B)(4)(f).

(D) Responsible Persons

(1) Generally

Any person who violates this Chapter shall be subject to the remedies and penalties set forth in this article.

(2) Signs

Any signs erected on private property in violation of the provisions this Chapter shall be presumed to have been erected by the owner of the property or by the person who owns sponsors, sells or otherwise possesses a beneficial interest in that which is described or advertised on the unlawfully erected sign. Any sign erected on publicly owned property in violation of the provisions of this Chapter shall be presumed to have been erected by the persons who own, sponsor, sell or otherwise possess a beneficial interest in that which is described or advertised on the unlawfully erected sign. It shall be the burden of such persons to rebut such presumption.

(E) Enforcement Generally

(1) Responsibility for Enforcement of Zoning Provisions

The Zoning Administrator shall enforce this Chapter. The Zoning Administrator shall be provided with the assistance of such other persons as the Town Manager may direct.

(2) Notice of Violations

When the Zoning Administrator finds that any activity, building, structure, or land is in violation of this Chapter, the Zoning Administrator shall notify, in writing, the person violating this Chapter. Such notification shall indicate the nature of the violation, order the necessary action to abate the violation, give a deadline for correcting the violation, and explain the appeal process. If a violation is not

corrected within a reasonable period of time, as provided in the notification, the Zoning Administrator shall take appropriate action to correct and abate the violation and to ensure compliance with this Ordinance. He or she shall take any other action authorized by law to ensure compliance with or to prevent violation of its provisions.

(3) Complaints Regarding Violations

Whenever a violation of this Chapter occurs, or is alleged to have occurred, any person may file a written or oral complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Zoning Administrator, who shall record the complaint. The Zoning Administrator shall promptly cause the complaint to be investigated, and action taken to abate or correct the violation.

(4) Inspections to Ensure Compliance

Upon presentation of proper credentials, the Zoning Administrator may enter any building, structure, land, or premises to ensure compliance with the provisions of this Chapter.

(F) Criminal Violations

(1) Fine

Any person, firm or corporation who as the owner of any land, building or structure, or the agent having possession or control of such property as employee, lessee, tenant, architect, builder, contractor or otherwise, knowingly refuses or neglects to comply with any written order issued by the Zoning Administrator to abate any violation of this Chapter shall be guilty of a misdemeanor punishable by a fine of not less than \$10.00 nor more than \$1,000.00.

(2) Remedy

If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the Zoning Ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10.00 nor more than \$1,000.00, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period, punishable by a fine of not less than \$10.00 nor more than \$1,500.00.

(3) Specific Uses

Conduct of an unpermitted boarding house, unpermitted rooming house, unpermitted inn or unpermitted transient lodging leading business constitutes a criminal violation of this chapter.

(4) Excessive Civil Penalties

Specific violations arising from the same operative set of facts charged three civil penalties and persisting after the third civil penalty charge and after the time for its payment constitute criminal violations of this chapter.

(G) Civil Violations

(1) Penalty

Except as provided in subsection (G)(2) below, any person, firm or corporation who as the owner of any land, building or structure, or the agent thereof having possession or control of such property as employee, lessee, tenant, architect, builder, contractor or otherwise, who permits, assists in or attempts any violation of this Chapter, whether by

1
2

act or omission, shall be liable for a civil penalty for each individual offense described in Table 78-203.G: Summary of Civil Violations, as follows:

| TABLE 78-203(G): SUMMARY OF CIVIL VIOLATIONS | | |
|--|--|--|
| OFFENSE | PENALTY FOR INITIAL SUMMONS (IN \$) | PENALTY FOR EACH ADDITIONAL SUMMONS (IN \$) |
| Establishing a prohibited use (except the conduct of an un-permitted boarding house, un-permitted rooming house, un-permitted inn, or of an un-permitted transient lodging business) | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to obtain Zoning Appropriateness Permit | \$200.00 | \$500.00 |
| Failure to obtain Zoning Inspection Permit | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Violation of home based business use-specific standards | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to properly screen material from public view as required | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to comply with an approved Conditional Use Permit or Special Exception | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to maintain site in accordance with approved site plan <u>or single lot development plan</u> | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to provide trash receptacle enclosure as required | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Conducting outdoor storage, sales, or display of materials required to be within a completely enclosed building | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to conform to the provisions of Section 78-403, Temporary Uses and Structures | \$200.00 | \$500.00 |
| Failure to conform to the provisions of the Chesapeake Bay Regulations | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to obtain a Floodplain Permit prior to conducting use | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to comply with performance standards for noise or odor control | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Encroachment of a structure or building into a required setback or yard | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Exceeding the height limitation for a building or structure, as set out in various provisions of this Chapter | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to obtain an approved Special Exception, as set out in various provisions of this Chapter | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Violation of the single family dwelling unit occupancy limitations | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Illegally establishing an accessory dwelling unit, as set out in various provisions of this Chapter | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Establish an unauthorized dwelling unit | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| The unlawful keeping, harboring or maintaining of livestock | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| The keeping or maintaining of shrubbery, plantings or any structure that creates a visibility problem | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Displaying merchandise or conducting business between the street line and the building setback area | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Erecting, altering, relocating or displaying a sign on private property without first obtaining a permit | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Erecting or posting off-site signs on private property | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Erecting moving signs, such as pennants, flags, and the like on private property | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Posting strings of lights in windows or on buildings | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to meet stated conditions of Sign Permit | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Erecting, reconstructing, demolishing , altering or restoring a building or structure in a Heritage Preservation District without obtaining a current, valid Certificate of Appropriateness | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to meet terms stated conditions of certificate of appropriateness | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Violation of Fencing Standards | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Violation of Performance Standards | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Violation of Standards for Refuse Enclosures | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Violation of Standards for Roll-Off Dumpsters | \$200.00 | \$500.00 |
| Failure to park a recreational vehicle in an approved area in a residential district as required | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Failure to park a commercial vehicle in an approved area in a residential district as required | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| The temporary or permanent occupancy of a recreational vehicle | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |

TABLE 78-203(G): SUMMARY OF CIVIL VIOLATIONS

| OFFENSE | PENALTY FOR INITIAL SUMMONS (IN \$) | PENALTY FOR EACH ADDITIONAL SUMMONS (IN \$) |
|---|-------------------------------------|---|
| while parked within the limits of the Town | | |
| Any violation related to a sign not requiring a permit | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Parking in front or side yard on unpaved surface | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Creation of excessively large paved surface for front or side yard parking | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |
| Creation of excessively large impervious surface on a lot improved with a single-family detached dwelling | \$100.00 <u>\$200.00</u> | \$250.00 <u>\$500.00</u> |

(2) Cumulative Penalties

Each day during which the violation is found to have existed shall constitute a separate offense. However, specific violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and shall not be charged more than three times. A series of specified violations arising more than three times from the same operative set of facts shall not result in civil penalties under this section. No such cumulative civil penalty shall ~~which~~ exceed a total of \$5,000.00.

(3) Limitations

No provision in this section shall be construed to allow the imposition of civil penalties (i) for activities related to land development or, (ii) for violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.

(H) Procedures for Civil Violations

(1) Notice of Violation

If the Zoning Administrator, or a designee, determines that a civil violation has occurred, the Zoning Administrator, or a designee, may cause a notice of the violation to be served by certified mail on any or all persons committing or permitting such violation, in accordance with Section 78-203(E)(2), Notice of Violation. This notice of violation will serve as a civil summons or ticket for the scheduled violation.

(2) Right to Stand Trial

Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance, care of the Department of Community Development prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.

(3) Payment of Penalty

The person waiving trial shall abate the violation and pay to the Town the civil penalty prior to the date set for trial.

(4) Violation to be Tried

If a person charged with and contesting a scheduled violation does not elect to enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. If the violation exceeds the jurisdictional limits of a general district court, the violation shall be tried in the county

1 circuit court. In any trial for a scheduled violation authorized by this section, it shall be
2 the burden of the Town to show the liability of the violator by a preponderance of the
3 evidence.

4 **(5) Liability**

5 An admission of liability or finding of liability shall not be a criminal conviction for any
6 purpose.

7 **(I) Cumulative Remedies**

8
9 Except as provided in Section 15.2-2209, Code of Virginia, the remedies provided in this
10 article are cumulative and not exclusive, and the designation of any violation of the
11 provisions of this chapter as a criminal or a civil violation shall not be construed as
12 prohibiting the Town from utilizing any remedies in the Code of Virginia or from initiating
13 appropriate injunctive, abatement, or other appropriate actions or proceedings to
14 prevent, correct, restrain, or abate violations.

15 **78-204 Performance Guarantees**

16 **(A) Public Improvements**

17
18 **(1) Performance Guarantee Required**

19 The Town shall require adequate financial assurance consisting of a
20 performance guarantee agreement and a security, in a form and manner that is
21 approved by the Town Attorney, for the construction of required public
22 improvements.

23 **(2) Improvements Subject to Guarantee Requirements**

24 Public improvements subject to performance guarantee requirements include,
25 but are not limited to, streets, curbs, gutters, sidewalks, trails, reforestation,
26 storm drainage facilities and associated grading, sanitary sewage facilities,
27 waterlines, property markers, streetlights, street trees, highway signs and
28 markers and other relevant features shown on or described in a Site Plan,
29 Single Lot Development Plan, Special Exception, Preliminary Subdivision
30 Preliminary Plan. Final Subdivision ~~Record~~ Plat, proffer associated with an
31 Official Zoning Map Amendment, or Generalized Development Plan.

32 **(3) Form of Performance Guarantee**

33 The performance guarantee for public improvements shall consist of:

34 **(a) Performance Guarantee Agreement**

35 A performance guarantee agreement between the owner, owner's
36 agent, or developer and the Town to construct and maintain until
37 acceptance such required physical improvements as are located within
38 public rights-of-way or easements or as are connected to any public
39 facility in form and substance as approved by the Town Attorney; and

40 **(b) Security**

41 A security, taking one or more of the following forms, as specified by the
42 Town:

- 43 1. Cash or certified check deposited with the Town of
44 Herndon;

2. Guarantee from a lender on the Town's approved list of local financial institutions based upon a cash deposit, in a form acceptable to the Town Attorney;
3. Irrevocable letter of credit from a northern Virginia banking institution in a form acceptable to the Town Attorney; or
4. Performance bond from a security institution approved by the Town's Director of Finance in a form acceptable to the Town Attorney.

(4) Time of Posting

All parties shall sign a performance guarantee agreement and the associated security posted by the owner, owner's agent, or developer prior to the final administrative approval of any site plan or single lot development plan by the Zoning Administrator, or prior to the recordation of any Final Subdivision ~~Record~~ Plat.

(5) Amount

The amount of the security is the full amount of the cost estimate plus contingencies, engineering costs and inflation. It shall include the total estimated cost of the required public improvements as determined by the then current Fairfax County Table of Public Improvement Costs or by the Herndon Director of Public Works if the improvements are not set forth in the Table.

(6) Duration

The performance guarantee agreement and security shall be provided for completion of all work covered thereby within the time to be determined by the applicant, which time may be extended by the Town Council upon written application by the owner, owner's agent, or developer, signed by all parties (including security, if appropriate) to the original agreement.

(7) Zoning Inspection Permit Approval Prior to Acceptance of Public Improvements

During certain seasons of the year, or due to the steps in the construction process, it may be impractical for some public improvements to be installed or totally completed (e.g., the final lift of asphalt on a street, sidewalks adjacent to driveway aprons, street trees, etc.) prior to occupancy or use of the property. When a Zoning Inspection Permit is requested prior to the completion of such improvements, the Town may approve a Zoning Inspection Permit if it is in the best interest of the Town to do so and when the following apply:

- (a) The Zoning Administrator determines the subject improvements cannot be timely completed because of weather, season, or other unavoidable circumstance;
- (b) The site can function without the subject improvements, without creating a threat to health, safety, and welfare, and without detrimental impacts to the surrounding properties and Town service provision in the area;
- (c) The owner, owner's agent, or developer demonstrates that contracts have been executed for the work remaining to be completed and such work shall be timely completed on or before a certain date; and
- (d) The owner, owner's agent, or developer submits a performance guarantee for completion of any public or private improvement shown on the approved plan of development, in accordance with this Section, if deemed necessary by the Zoning Administrator.

(8) Release

1 Upon satisfactory completion of the installation of the required public
2 improvements, the Town Manager shall, following a recommendation from the
3 Directors of Community Development, Finance, and Public Works, release the
4 security in accordance with the standards in Section 15.2-2245 of the Code of
5 Virginia (as amended).

6 **(9) Filing Fee**

7 A filing fee, tabulated in accordance with the fees in Section 78-201(B)(3)(c)(3),
8 shall be paid prior to submittal of a performance guarantee, request for an
9 extension of time, request for reduction of a performance guarantee, or a
10 request to replace a performance guarantee.

11 **(10) Indemnity Insurance**

12 The owner, owner's agent, or developer shall furnish such insurance as is
13 deemed necessary by the Town, and approved as to form by the Town Attorney,
14 to indemnify and hold harmless the Town from any and all liability arising by
15 reason of the unimproved conditions of the development that may arise or grow
16 out of the construction or installation of such public improvements. The
17 insurance shall be of such duration as determined by the Town, but shall in no
18 case be allowed to expire earlier than the effective period of any performance
19 guarantee agreement. A copy of the insurance policy shall be filed in the office
20 of the Zoning Administrator.

21 **(11) Forfeiture**

22 **(a) Failure to Install Improvements**

23 If an owner, owner's agent, or developer fails to properly install all
24 required improvements within the time-frames established by this
25 Chapter or the Zoning Administrator, the Town shall give 30-days
26 written notice to the owner, owner's agent, and developer (if different) by
27 certified mail, after which time the Town may draw on the performance
28 guarantee and use the funds to complete the required improvements.
29 The Performance Guarantee Agreement may provide for more timely
30 action in the event of a threat to public health or safety.

31 **(b) Report of Expenditures**

32 After completing the required improvements, the Town shall provide a
33 complete accounting of the expenditures to the property owner, owner's
34 agent, or developer (as appropriate) and, as applicable, refund all
35 unused security deposited, without interest, to the party posting the
36 guarantee. If the costs to complete the required improvements are
37 greater than the amount of the security, the Town may assess the
38 additional costs to the affected property owner(s) or responsible
39 association, which assessment shall constitute a lien upon the property
40 and shall be collected in the manner of tax assessments.

41 **(B) Protection of Existing Public Improvements, Protection of Trees, and Required**
42 **Private Improvements**

43 **(1) Performance Guarantee Required**

44 The Town shall require adequate financial assurance consisting of a
45 performance guarantee agreement and a security, in a form and manner that is
46 approved by the Town Attorney, for the construction of certain required private
47 (on-site) improvements, including erosion and siltation control devices, tree
48 retention and protection measures, and required landscaping, as well as for the
49

reconstruction of existing on-site or nearby public improvements that could be damaged during the development process.

(2) Performance Guarantee Allowable

In addition to the performance guarantees required for private improvements in Section 78-204(B)(1), the Town may require the owner, owner's agent, or developer to post a performance guarantee for open space set-asides, and on-site private improvements such as off-street parking and loading, landscaping, exterior lighting, and other relevant features shown on or described in a Site Plan, Single Lot Development Plan, Special Exception, Preliminary Subdivision Preliminary Plan, Final Subdivision Record Plat, proffer associated with an official Zoning Map Amendment or Generalized Development Plan.

(3) Form

The form for a performance guarantee posted for a private improvement shall be in accordance with the standards in Section 78-204(A)(3), *Form of Performance Guarantee*. The Zoning Administrator may, in certain instances, allow a single performance guarantee to be posted for both public and private improvements associated with a single development.

(4) Time of Posting

The time of posting for a performance guarantee for private improvements shall be in accordance with the standards in Section 78-204(A)(4), *Time of Posting*.

(5) Amount

The security amount for private improvements shall be as follows:

(a) Erosion and Siltation Control Devices

1. For industrial and commercial development: three hundred dollars (\$300.00) per acre, with a minimum of \$1,000.00.
2. For mixed use and residential development: one hundred seventy-five dollars (\$175.00) per lot, with a minimum of \$1,000.00.

(b) Tree Protection and Retention

1. For tree protection: three dollars (\$3.00) per linear foot of tree protection fencing or other approved demarcation of the limits of clearing; and
2. For tree retention, the amount of the security will be established by the Zoning Administrator, based upon a determination of which trees are at risk.

(c) Required Landscaping

The amount of the security for required landscaping shall be based on Table 78-204.B, *Security for Required Landscaping*.

| TABLE 78-204.B: SECURITY FOR REQUIRED LANDSCAPING | |
|---|---|
| TYPE OF MATERIAL | AMOUNT OF SECURITY |
| Deciduous Canopy/Shade Tree | \$150.00 per caliper inch |
| Deciduous Under story/Ornamental Tree | 2 inch caliper or less - \$200; More than 2 inch caliper – \$120.00 per caliper inch |
| Evergreen Tree | \$240.00 per each tree 6 feet in height + \$60 for every additional 2 feet in height |

TABLE 78-204.B: SECURITY FOR REQUIRED LANDSCAPING

| TYPE OF MATERIAL | AMOUNT OF SECURITY |
|--|--|
| Shrub | \$30.00 per each shrub 3 feet in height + \$10 for every additional 1 foot in height |
| NOTES: If the total amount of the required landscaping security exceeds \$15,000.00, then up to seventy-five percent (75%) of the total security amount may be posted in the form of an Irrevocable Letter of Credit. | |

(d) Protection of Existing Public Improvements
The amount of the security shall include the total estimated cost of replacement for all existing on-site and nearby public improvements that could be damaged during development, as determined by the Director of Public Works utilizing the current Fairfax County Table of Public Improvement Costs.

(e) Other Private Improvements
The Zoning Administrator shall estimate the amount of the security for any other private improvements based on recommendations from the Director of Public Works.

(6) **Duration**
The duration of the performance guarantee agreement for private improvements shall be in accordance with the standards in Section 78-204(A)(6), *Duration*.

(7) **Occupancy Prior to Completion of Private Improvements**
During certain seasons of the year, it may be impractical for some private improvements, such as off-street parking and loading or landscaping, to be installed or completed prior to occupancy or use of the property. When a Zoning Inspection Permit is requested prior to the completion of such improvements, the Town may approve a Zoning Inspection Permit if it is in the best interest of the Town to do so and when the following apply:

- (a) The Zoning Administrator determines the subject improvements cannot be timely completed because of weather, season, or other unavoidable circumstance;
- (b) The site can function without the subject improvements, without creating a threat to health, safety, and welfare, and without detrimental impacts to the surrounding properties and Town service provision in the area;
- (c) The owner, owner's agent, or developer demonstrates that contracts have been executed for the work and such work shall be timely completed on or before a certain date; and
- (d) The owner, owner's agent, or developer submits a performance guarantee for completion of any public or private improvement shown on the approved plan of development, in accordance with this Section, if deemed necessary by the Zoning Administrator.

(8) **Release**

- (a) Erosion and Sedimentation Control Devices
Upon satisfactory completion of the development, and issuance of a Zoning Inspection Permit, the owner, owner's agent, or developer may apply in writing for a release of the unexpended or unobligated portion of such security.

(b) Tree Protection and Retention Measures

1. Upon satisfactory completion of the development, the owner, owner's agent, or developer may apply in writing for a release of the tree protection and tree retention security. The community forester shall make the determination concerning the degree of damage to any tree, whether replacement of any damaged tree is required, or the corrective measures to be taken to ensure the survival of damaged trees. The community forester shall notify the owner, owner's agent, or developer if any trees must be repaired or replaced because of the damage caused by the stress of construction or shall refund one-half of the security if no repairs or replacements are needed.
2. Upon notification by the community forester that repairs or replacements are to be made, the owner, owner's agent, or developer shall make the required repairs and replacements and shall notify the community forester when the repairs and replacements are complete. The community forester shall inspect the repairs and replacements and shall notify the owner, owner's agent, or developer when it is determined that the required repairs and replacements have been adequately performed. One half of the security shall then be refunded.
3. The remaining one half of the security shall be held for a period of three years from the date of the community forester's notification to the owner, owner's agent, or developer that the required repairs or replacements have been completed or at such time as may be determined by the community forester. The purpose of retaining this portion of the security is to ensure that trees, which are damaged by construction, but where injury becomes apparent after construction is completed, will be repaired or replaced. At the end of this three-year period, the owner, owner's agent, or developer may apply to the town in writing for a release of the unexpended or unobligated portion of such security. If the protected trees have survived in good health, based upon the opinion of the community forester, the town shall release the security. The security shall not be discharged until all required repairs or replacements have been made.
4. If the owner, owner's agent, or developer refuses to comply with the requirements of the community forester, the Town may, at its option, have the work performed by others or by its own forces in accordance with Section 78-204(B) (10), *Forfeiture*. All costs incurred by the Town shall be reimbursed from the security.
5. If the owner, owner's agent, or developer has during the two-year period, sold all or a portion of the real estate subject to the agreement, the original owner, owner's agent, or developer shall continue to be responsible for all measures required by the agreement and for all trees subject to the performance guarantee agreement. The

original owner, owner's agent, or developer shall take the measures, and repair or replace trees as required by the community forester.

(c) Required Landscaping

Upon satisfactory installation of all required landscaping, the owner, owner's agent, or developer may apply in writing for a release of up to eighty percent of the security. The Town shall retain an additional twenty percent of the security for a period of one (1) year from the date of the first release to ensure continued functioning and maintenance of all required landscaping. Following a passing inspection of the required landscaping by the Town one year after the initial release of the security, the owner, owner's agent, or developer may request in writing a release of the unexpended or unobligated remaining portion of such security.

(d) Security to Protect On-site or Nearby Public Improvements

Upon satisfactory completion of the development, and issuance of a Zoning Inspection Permit, the owner, owner's agent, or developer may apply in writing for a release of the unexpended or unobligated portion of such security.

(e) Other Private Improvements

Following a passing inspection of the private improvements by the Town, the owner, owner's agent, or developer may request in writing a release of the unexpended or unobligated remaining portion of such security. The Town shall release such security consistent with the provisions of Section 78-204 (A)(8), *Release*.

(9) Filing Fee

A filing fee, tabulated in accordance with the fees in Section 78-201(B)(3)~~(e)(3)~~, shall be paid prior to submittal of a performance guarantee, an extension of time, request for reduction of a performance guarantee, or a request to replace a performance guarantee.

(10) Forfeiture

Forfeiture of security shall be in accordance with the requirements and standards described in Section 78-204(A)(11).